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Log Export and Import Restrictions of the U.S. Pacific Northwest and British Columbia: Past and Present

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Abstract

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Export constraints affecting North American west coast logs have existed intermittently since 1831. Recent developments have tended toward tighter restrictions. National, Provincial, and State rules are described.

Keywords: Log exports, log imports, log embargoes, log trade restrictions.

Summary

From being a nuisance, and an inhibitor of national growth and expansion, to providing economic security, timber has played a strategic role in the development of both the U.S. Pacific Northwest and British Columbia. Over the years, an evolution in thinking has changed the approach of some regulations banning log exports and, in other ways, has further solidified existing legislation. This paper will speak to the evolution of export and import restrictions, from their inception to the present day, pertinent to the United States and British Columbia. The typical evolution has been to become progressively more restrictive regarding the use of timber from public lands until judicial procedures deem certain restrictions unconstitutional, which has occurred with increasing frequency over the years. Legal remedies, however, tend to follow these decisions and to reinstate similar laws limiting exports or imports.

The tone of the legislation has been to maintain economic stability, provide natural resources for national needs, and more recently, to preserve the existing resource from overharvesting or pest infestation, or both, and to officially direct the use of public forests toward multiple use.

These regulations are constantly evolving, and at printing, new regulations are on the drawing board for both British Columbia and Alaska. Federal legislation now bans the export of timber (logs) from all public lands (State and Federal) in the continental United States west of longitude 100° W. under the Forest Resources Conservation and Shortage Relief Amendment Act of 1993, which has provisions to ban log exports from State lands if the State refuses to enact such regulations abiding by the amendment. Alaska cannot ship any timber in log form from public lands within its boundaries under the authority of the Organic Act of 1927. Meanwhile, British Columbia has controlled log exports with restrictions similar to those in place in Alaska.

Due to harvest restrictions, supply limitations, and price fluctuations, timber buyers are beginning to import timber into North America in increasing volumes. This poses a competitive situation, as well as a pest and disease risk that may be carried into North America with the imported timber. To caution against such an infiltration, both the United States and Canada are assessing and implementing new regulations to specifically ban the import of some wood products. (These regulations do not apply to timber exports between the two countries.) The United States has banned log imports from all but Chile and New Zealand; although importing procedures for wood products from outside the United States and Canada have been drafted and are undergoing review. Canada, meanwhile, has decided to conduct a pest-risk assessment for each potential exporting country. So far, only former Soviet Union countries have been directed to the necessary pest-risk assessment procedures before importation into Canada.

Specific agency actions, judicial decisions, and restrictions regarding Native American lands are elaborated on in the text. A timeline also is provided that summarizes the acts, rulings, agreements, and decisions that have occurred over the course of the development of these timber regions.

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Historical Economic Conditions in North America

During the days of exploration and colonization, log exports were a highly prized commodity valued for their role in assuring naval power. The logs and their derivatives were used by the “mother countries,” such as England and France, to build large fleets to control the high seas. The first recorded shipment of masts from the Colonies was sent from Virginia to England in 1609, and other shipments soon flowed from what is now the United States and Canada. Because of this continuous demand, by 1780-81, all masts on the ships in the English, French, and Spanish navies were made of American timbers.¹

But as common history goes, the Colonies rebelled against the occupation of the mother countries, such as England, who until that time had (through the Broad Arrow policy of 1691) reserved all trees more than 24 inches (61 cm) in diameter for the Royal Navy. This successful liberation of the United States led the timber market to wane as logs became more of a nuisance to the rapidly expanding population of this well-forested country. Timber literally stood in the way of the blossoming population that demanded agricultural sustenance, not more wood. The first colonial legislation for logs and log rafts on waterways was introduced in 1752, based on the following:²

First, the forest had great money possibilities. Its use should be regulated, therefore, so that the greed or carelessness for the few should not injure to the disadvantage of the many. Second, the exhaustion of timber easily got at and brought to mill was possible, but the total exhaustion of the forests was utterly impossible. Third, even if the forests were totally cut away, it would be no crying matter, for they were in many respects a nuisance.

This supposedly “limitless resource” was hampering economic and agricultural growth and development. Consequently, with the resource in such abundance and minimal foreign buyers, the log export market stagnated until late in the 20th century.

The log export revival was primarily a west coast phenomenon. A few entrepreneurs began to recognize the old-growth forests of the U.S. Pacific Northwest as a potential, untapped asset. The concurrent development of operable ports and waterways in the Northwest encouraged the emergence of an unpredictable, sputtering log export market. British Columbia tapped this asset as a lucrative revenue builder as well.

Since the beginning of the 20th century, however, political pressures have arisen over whether to continue to allow log exports from the United States—particularly during lean times and recessions when the economy is weakened and jobs grow scarce. This pattern has continued to the present day.

Those arguing against log exports have claimed that the process employs fewer people than are required to manufacture lumber and other remanufactured wood products, and consequently, fewer manufacturing plants are built domestically to process the timber. Exporting of logs, purportedly, causes a nation’s economy and a country’s general welfare to suffer. These objections have been effective in raising

¹ Jenks, Cameron. 1944. *The development of governmental forest control in the United States*. New York: Da Capo Press: 14.

² Cameron 1944: 18 (see footnote 1).

public concern, which has led to legislation restricting exports. Direct benefits from such restrictions have encouraged growth in some areas of the timber industry, such as domestic manufacturing, employment, increased revenues, and more recently, protection of a renewable resource and the environment.

In general, during the early and mid 1900s, Federal legislation in the United States and Canada was primarily passive regarding log exports, in an effort to avoid interfering in domestic commerce. After World War II, North America discovered that the once-sputtering demand for timber exports had been ignited by foreign demand and could be fueled by a plentiful supply of North American timber. The demand generated jobs and revenues in the domestic market. Over the next 20 years, however, as foreign and domestic demand for raw timber continued to rise, supply began to wane: old-growth timber stands were harvested faster than they could be replaced. As the economy and timber markets faltered, Federal, State, and Provincial legislation was introduced, or amended, to provide a prominent, uniform basis for log export restrictions.

This paper will examine the past and present export policies that have led to current log export prohibitions, and how these regulations are implemented by government agencies in the United States and the Province of British Columbia. Also, newly implemented import restrictions have been established to prevent disease and insect infestation: this issue will be addressed too.

The evolution of restrictive log export and import rules and regulations will be discussed in chronological order, by country, with some mention of the contributing economic and social conditions that led to their enactment. The U.S. congressional decisions regarding log export regulations and the role of the Federal agencies in implementing these rules and regulations will be presented in the first part of this paper, followed by State restrictions for Washington, Oregon, Alaska, California, Idaho, and Montana. British Columbia's Provincial and Federal (Crown) legislation will then be discussed. The most recent addition to timber trade rules regarding import regulations for the United States and Canada can be found in the last section of the text. A timeline is appended. Some of the information included in this paper is repeated from earlier reports by Austin,³ Lindell,⁴ and Hines⁵ as well as a British Columbia log export history compiled by Shinn.⁶

³ Austin, John W. 1969. Log export restrictions of the Western States and British Columbia. Res. Pap. PNW-91. Portland, OR: U.S. Department of Agriculture, Forest Service, Pacific Northwest Forest and Range Experiment Station. 13 p.

⁴ Lindell, Gary R. 1978. Log export restrictions of the Western States and British Columbia. Gen. Tech. Rep. PNW-63. Portland, OR: U.S. Department of Agriculture, Forest Service, Pacific Northwest Forest and Range Experiment Station. 14 p.

⁵ Hines, Judith A. 1987. Log export restrictions of the Western States and British Columbia. Gen. Tech. Rep. PNW-GTR-208. Portland, OR: U.S. Department of Agriculture, Forest Service, Pacific Northwest Research Station. 13 p.

⁶ Shinn, Craig W. 1993. British Columbia log export policy: historical review and analysis. Res. Pap. PNW-RP-457. Portland, OR: U.S. Department of Agriculture, Forest Service, Pacific Northwest Research Station. 52 p.

**United States—
Federal Rules and
Regulations
The Early History**

| Key regulations | Year |
|---------------------------------------|-------------|
| Antitrespass Law | 1831 |
| Timber and Stone Act | 1878 |
| Organic Administration Act | 1897 |
| Act of May 14, 1898 | 1898 |
| Annual Appropriation Act Riders | 1905-26 |
| Act of April 12, 1926 | 1926 |
| Act of May 11, 1926 | 1926 |
| Sustained Yield Forest Management Act | 1944 |
| Small Business Set-Aside Act | 1958 |

Some today would believe that from 1831 to 1905, the restrictions on log exports of timber from public lands were as restrictive as the legislation of the 1990s. The first law referring to log exports by the U.S. Congress was issued long before 1900: the Antitrespass Law of 1831. Denying purchasers access to timber harvested from public lands with the intent to export the logs, the Antitrespass Law was one of the many policies enacted during the mid 1800s that promoted agricultural development, settlement of the west, and economic growth.

None of the regulations promoting development of the Western United States, however, contained provisions that encouraged or allowed the general public to acquire and develop the vast acreage of what was interpreted at the time to be surplus or “limitless” timbered lands. To foster the development of these timbered lands “unsuitable” for farming, and to promote economic welfare and national security, Congress enacted the Timber and Stone Act of 1878 (20 Stat. 89) to supersede the Antitrespass Law. This act provided 160-acre (64-ha) lots in Washington, Oregon, California, and Nevada for sale to the public, conditional on the purchaser’s promise to abide by the provisions within the act, one of which forbade the removal of timber from public lands for export. This act, intended to help individuals acquire timber lands, was unfortunately abused by speculators and the timber industry, thereby leading to the enactment of more restrictive laws.

The Organic Administration Act of June 4, 1897, and the Act of May 14, 1898, were two such laws. Also known as the Sundry Civil Expenses Appropriations Act of 1897,⁷ the Organic Act authorized the sale of timber from National Forests for use in the State or Territory where it was harvested, but it prohibited interstate exports. Similarly, the Act of May 14, 1898, extended the homestead laws to Alaska, and authorized the Secretary of the Interior to sell timber from the public lands in Alaska for use in the Territory, but not for export.

But by 1905, because the Secretaries of the administering agencies could not authorize exports, the Organic Administration Act of 1897 was found to be too restrictive. To remedy the situation, a provision was added to the annual Appropriation Act

⁷ Organic Administration Act of June 4, 1897, Ch. 2, 30 Stat. 11, as amended; 16 U.S.C. 473-475, 477-482, 551.

in 1905⁸ allowing the Secretary of Agriculture to authorize timber exports. Subsequent appropriation act riders were approved each year until 1926: Each rider stated essentially the same thing (see footnote 8):

The Secretary of Agriculture may, in his discretion, permit timber and other forest products cut or removed from the national forests to be exported from the State or Territory in which said forests are respectively.

Each renewed provision essentially annulled the Organic Act of 1897 for the ensuing year (“at first with the exception of Idaho and South Dakota, but [after] 1913, without such exceptions”).⁹

By the 1920s, the legality of legislating within an appropriation act was challenged. During the House debate for the appropriation bill for fiscal year ending June 30, 1924, the provision was not renewed based on the question of legality; the rider was later restored in the Senate version of the bill.

By this time, both Secretaries supported permanent export legislation. Secretary of Agriculture Jardine wrote (see footnote 9):

This department believes that permanent legislation to replace the prohibition in the Act of June 4, 1897 is very desirable and necessary as a safeguard to the business enterprises based on the logging of national-forest timber.

In light of these recommendations and to avoid possible legal complications, the Act of April 12, 1926,¹⁰ was passed, relaxing but not amending the Organic Act of 1897, which still prohibited interstate exportation.¹¹ The act granted the Secretaries the authority to allow log exports (see footnote 10):

Timber lawfully cut on any national forest, or on the public lands in Alaska, may be exported from the State or Territory where grown if, in the judgment of the Secretary of the department administering the national forests, or the public lands in Alaska, the supply of timber for **local use** will not be endangered thereby, and the respective Secretaries concerned are hereby authorized to issue rules and regulations to carry out the purpose of this Act [emphasis added].

Local use, the primary qualifier for future regulating decisions, was later interpreted as “the supply of timber for local consumptive use rather than the supply of timber to meet the needs of local mills processing timber for non-local markets as well as local

⁸ Agricultural Appropriation Act of March 3, 1905, 33 Stat. 861, 873.

⁹ Jardine, W.M. 1926. Letter from the Secretary of Agriculture, dated January 20, to Hon. N.J. Sinnott, chairman, Committee on the Public Lands, House of Representatives.

¹⁰ U.S. Congress. Act of April 12, 1926, Exportation of Timber, P.L. 69-100, Ch. 117; 44 Stat. 242, as amended; 16 U.S.C. 616, 617.

¹¹ The 1897 act was later amended by the National Forest Management Act (NFMA) of 1976, P.L. 94-588, 90 Stat. 2949, as amended; 16 U.S.C. 472a et. seq. to remove the ban interstate log exports.

markets.”¹² This interpretation remains the primary authority regarding timber sales from National Forests in Alaska.

Even though this act gave the Secretaries permanent authority to restrict the export of National Forest timber, the ensuing Appropriation Act of May 11, 1926,¹³ permitted the exportation of forest products: “...the Secretary of Agriculture may permit timber and other forest products to be cut and exported beyond the State in which the forests are situated.”

This open log export policy approach continued until public and industry concerns led to change in the late 1960s.

Other legislation enacted during the 1940s and 1950s also contributed indirectly to log export controls by requiring primary processing or domestic manufacturing. The Sustained Yield Forest Management Act of March 29, 1944,¹⁴ was enacted to provide timber harvests on a sustained-yield basis to maintain the timber resource and industry and to provide jobs for the involved communities through formal agreements. Stipulations within the agreements indirectly restricted log exports, for they required between 80 and 100 percent of the timber to be manufactured within the community. In time, one cooperative agreement among a local community, the Federal government, and the Simpson Timber Company emerged, while five Federal Sustained Yield Agreements were created between communities and the government.

Another act, which still restricts log exports, is the Small Business Set-Aside Act of 1958.¹⁵ The purpose of the act is to enable small timber companies (less than 500 employees) in local communities to be competitive with large timber firms. Provisions of the act permit the “set-aside” of Federal timber for small businesses unable to acquire sufficient supplies of timber from their market areas through normal market means. Although the act did not specifically impose export restrictions, the Forest Service mandated that only 30 percent of the timber purchased by a recognized small business could be sold without domestic manufacture by the purchaser, whereas in Alaska, the small businesses were required to process only 50 percent of the logs instead of 70 percent because of the large volume of pulp logs often present in sales. These small Alaska mills, however, tended to do most of the primary manufacturing themselves because they received higher returns from the more labor-intensive, value-added products.

All timber from these set-aside sales must now receive domestic processing, since the passage in the early 1970s of Federal regulations prohibiting the export of logs from Federally owned lands. Purchases of set-aside timber are now subject to the same limitations as those affecting the National Forests.

¹² Brief Summary of General Counsel's Memorandum of July 10 in Reply to the Questions Submitted by Senator Morse of Oregon relative to the Secretary's Authority to Sell Timber from the National Forests for Export. [Date unknown]. Washington, DC: U.S. Department of Agriculture, Office of the General Counsel:4.

¹³ Appropriations Act of 1926, Ch. 286, 44 Stat. 512.

¹⁴ Sustained Yield Forest Management Act of March 29, 1944, 54 Stat. 132 (as amended); 16 U.S.C. 583-583i.

¹⁵ Small Business Set-Aside Act of July 18, 1958, 72 Stat. 384, as amended, pt. 121.

The Last 25 Years

After World War II, timber, then seen as an overabundant, inexhaustible resource, quickly entered the export market. The export market was serving two purposes: first, it was looked on favorably as an outlet for excess harvested timber; and second, the additional demand led to an increase in prices in both the domestic and foreign markets, thereby encouraging higher returns. This seemingly unlimited demand and rising prices eventually had to peak.

In 1962, the Columbus Day Storm occurred that left about 11,190 million board feet (mmbf; about 65 million m³) of blowdown, or salvage timber, in western Washington and western Oregon—much more timber than could be feasibly consumed by the domestic market at that time. As a result, the industry and Federal government cooperatively encouraged the export of surplus domestic timber from the ongoing salvage operations after the storm.¹⁶

The rapid growth in foreign demand for raw logs led to rising U.S. concerns regarding the domestic impact of the log exports, especially to Japan. Total log export volumes had grown by 560 percent between 1962 and 1967, to 1600 mmbf (about 7.2 million m³), and export volumes for 1972 were forecast at 4,500 mmbf (about 20 million m³).

Concerned that an unharnessed log export policy would jeopardize a viable domestic wood processing industry in the Pacific Northwest, wood product manufacturers urged the Departments of Agriculture and the Interior to restrict exports. Successive meetings

occurred between industry and U.S. and Japanese government representatives to alleviate these concerns and find an equitable solution. As a result of these efforts, joint determinations were issued by the Secretaries of the Interior and Agriculture.

Joint determinations by the Secretaries of Agriculture and the Interior—

Key provisions—

- Prohibited export of all but 350 mmbf (about 1.6 million m³) of Federal timber from western Washington and western Oregon.
- Determined Port-Orford-cedar (*Chamaecyparis lawsoniana* (A. Murr.) Parl.) and Alaska-cedar (*C. nootkatensis* (D. Don) Spach)¹⁷ to be surplus to domestic needs.

Issued April 16, 1968, by the Secretaries of Agriculture and the Interior, the joint determinations specified a primary processing requirement for logs originating from Washington and Oregon, effective April 22.¹⁸ The announced rationale behind the joint determinations was to ensure an ample supply of timber to meet domestic demand while improving the National Forests for future generations. Restricting the export of

¹⁶ Export restrictions did not yet exist, except for a negligible number of Small Business Set-Aside Sales or from cooperative agreements, so this was purely a matter of marketing.

¹⁷ Also commonly known as Alaska yellow-cedar.

¹⁸ The authority for the Secretary of Agriculture's action is contained in the Organic Administration Act of June 4, 1897, 16 U.S.C. 475, 551. In the case of the Secretary of the Interior, the Oregon and California Railroad Act amendments of August 28, 1937, 50 Stat. 874, provided the enabling legislation.

unprocessed logs harvested from Federal lands, the determinations were deemed necessary to maintain a vital domestic wood processing industry capable of processing the sustained yield of timber from selected areas (see footnote 4).

The determinations provided for U.S. primary processing of all but an annually pre-determined 350 mmbf (about 1.6 million m³) of Federal timber, harvested in western Washington and western Oregon (and a few areas in the eastern portions of the two states).¹⁹ Any cants sawn on two sides, squares that were 8 inches (20.32 cm) or less in thickness through the sawn dimension, smaller sawn products, veneer, pulp, or chips, were considered to have received primary processing.²⁰ Log exports originating on Federal lands within the Grays Harbor Federal Sustained Yield Unit and the Shelton Cooperative Unit were not included in the 350-mmbf (1.6-million m³) exemption because the sustained yield agreements already mandated 95 percent primary manufacture within the units.

A plan addressing the operating and administrative details of the determinations accompanied the joint determinations. The plan included a definition of processed products and procedures for declaring certain species exempt. Subsequently, the Secretaries exempted Alaska-cedar and salvage Port-Orford-cedar (except for select arrow-shaft material), because those species were considered surplus to domestic needs.

The Secretary of Agriculture based his authority for issuing the joint determination on the 1897 Organic Act.²¹ The Secretary of the Interior based his authority on the Oregon and California Railroad Act.²²

Below, as with subsequent acts discussed, are the actions taken by the primary overseeing agencies, the USDA Forest Service and the USDI Bureau of Land Management (BLM). The agency actions for Alaska differ and will be addressed later.

¹⁹ Secretary of Agriculture. 1968. A determination by the Secretary of Agriculture concerning primary processing of timber from National Forests of the Pacific Northwest. Specified in the Secretary of Agriculture's April 16, 1968, memorandum to the Chief of the Forest Service. On file with: Pacific Northwest Research Station, 4043 Roosevelt Way, NE, Seattle, WA 98105.

²⁰ Austin 1969: 1 (See footnote 3).

²¹ There has been much confusion over what authority many of these actions reflect. The Secretaries considered issuing the joint determination under the previously mentioned Act of 1926 (see footnote 10). However, they were counseled that there was no justification in the act because local timber supplies would not be endangered. Not until 1976, when the National Forest Management Act (see footnote 11) was passed, with its repeal of previous interstate-sale restrictions, did the Organic Act become relevant.

²² Oregon and California Railroad Act of 1866, July 26, 1866 c. 242; 14 Stat. 239.

Agency regulations²³—

Forest Service

Some of the Forest Service's earliest regulations on log export restrictions in the lower 48 States originated as a result of the 350-mmbf (1.6-million-m³) export exemption allocated in the Secretaries' joint determinations of 1968. The Forest Service was allotted 290 mmbf (1.3 million m³) and distributed this export allowance throughout the National Forests in Washington and Oregon based on the timber exports from those forests in the previous year. Of eligible timber sales over US\$2,000, Washington received 199 mmbf (900,000 m³) and Oregon's National Forests were allocated 91 mmbf (410,000 m³).

The Forest Service did stipulate that if a restricted (or nonexempt) timber sale did not receive any bids when offered, then the sale could be offered again without the primary manufacturing requirement.

Although the joint determinations were scheduled for review and renewal in June 1969, the rules were superseded by the Morse Amendment, effective January 1, 1969.

Morse Amendment to the Foreign Assistance Act of October 8, 1968²⁴—

Key provisions—

- Extended export prohibition to all States west of the 100th meridian, including Alaska.
- Distributed 350 mmbf (1.6 million m³) allowable export allotment among Washington, Oregon, and California.
- Permitted the Secretaries of Agriculture and the Interior to declare certain amounts of specific species surplus to domestic needs.
- Authorized the Secretaries to issue rules and regulations regarding substitution.
- Authorized the Secretaries to exclude sales of less than US\$2,000 at their discretion.

²³ Austin 1969: 6 (see footnote 3).

²⁴ Foreign Assistance Act of [October 8] 1968, 82 Stat. 966, pt. IV.

Bureau of Land Management

The first regulatory actions by BLM on log export restrictions stemmed from the 1968 joint determinations. The BLM chose to distribute the 60 mmbf (270,000 m³) of exempt sales to five western Oregon districts (because most BLM land is in Oregon) in proportion to each district's allowable cut. The exportable timber allowance was allocated to sales >100,000 board feet (bd. ft.; 450 m³) with strict conditions. All sales under that volume were required to receive 95 to 100 percent of their primary, completed manufacture not just domestically, but within the States of Washington, Oregon, and California. Poles, pilings, and structural timbers were considered exportable by both the Forest Service and BLM; however, BLM required written approval before the materials could be shipped from the region.

Throughout the late 1960s, Senator Wayne Morse (Oregon) and many other Congress members were advocating restrictive export legislation. Senator Morse, however, objected to the selective limitations of the joint determinations, which applied only to Washington and Oregon, and argued that the provisions were inadequate to achieve an equitable solution to the timber supply and job shortage. He also campaigned against the regulations, claiming that the determinations simply directed the more lucrative foreign log export market to California coastal ports.

In response to the joint determinations, Senator Morse proposed part IV of the Foreign Assistance Act of 1968 (82 Stat. 966), which passed and amended the Act of April 12, 1926 (see footnote 24). Authority for the regulations contained in the Morse amendment were the same as the Act of April 12, 1926.

Known commonly as the Morse Amendment, the legislation extended the area covered by the export ban to all Federal lands west of longitude 100° W., including Federal lands in Alaska. While maintaining the 350-mmbf (1.6-million-m³) export allowance established by the joint determinations, the amendment indicated that California was to be allocated some of the unrestricted Federal timber sales, along with Washington and Oregon.

The amendment also authorized the Secretaries of Agriculture and the Interior to issue rules and regulations to prevent the substitution of Federal timber for non-Federal timber in the export market and permitted them to declare certain amounts of unprocessed timber surplus to domestic needs and thus eligible for export. These decisions were to be based on information from public hearings and with additional counsel to determine which, if any volumes, species, and grades might be surplus to local needs. This differed from the joint determinations in that the Morse Amendment contained specific provisions, and the previous legislation only described procedures to be followed.

The Morse Amendment applied to all future contracts, extended timber sale contracts for timber in western Washington and Oregon that had been signed before the joint determinations had been enacted, and extended contracts signed in other States west of the 100th meridian before the enactment of the Morse Amendment.

Agency actions resulting from the Morse Amendment—

Forest Service

Similar distribution procedures (to those in the joint determinations) were applied under the Morse Amendment, although minor agency regulation changes did occur in 1970. These changes covered the allocation of the timber export exemption by State to include California (187 mmbf [840,000 m³] to Washington, 88 mmbf [400,000 m³] to Oregon, and 15 mmbf [68,000 m³] to California). A hearing was required to determine if that timber was actually surplus to domestic needs before a restricted sale without bidders could be offered again without a primary manufacturing requirement.

Bureau of Land Management

Similar restrictions (to those in the joint determinations) continued after the enactment of the Morse Amendment. Again allocating its 60 mmbf (270,000 m³) to sales in its five districts within western Oregon, BLM allowed the exemptions only on sales volumes >2 mmbf (9,000 m³) unless the sale was exempted by the Oregon State Director of the Bureau. No predetermined actions were mandated for sales not receiving bids. This policy remained in place until changes were made to comply with the Department of the Interior and Related Agencies' Appropriations Act of 1973.

Scheduled to expire on December 31, 1971, the provisions established in the Morse Amendment were renewed through the end of 1973 by Congress as an amendment to the Housing and Urban Development Act of 1970.²⁵

Department of the Interior and Related Agencies Appropriations Acts—

Key provisions—

- Alaska no longer included in export restrictions.
- Secretaries directed to enact regulations to define and prevent substitutions.
- All log exports from Federal lands prohibited.

During the last 2 years of the Morse Amendment, economic conditions again changed the timber market. An unprecedented housing boom occurred in both the United States and Japan, which caused the demand for timber to be much greater than the supply available. By the early 1970s, correcting for the subsequent domestic shortage of timber became a topic of great debate. Many proposals for limiting log or lumber exports, or both, from state, Federal, and even private lands were submitted to Congress for consideration as possible solutions.

Finally in October 1973, a rider was attached to the Department of the Interior and Related Agencies Appropriations Act of 1973,²⁶ which completely banned the use of funds appropriated to Federal agencies for processing Federal timber sales where the timber may be exported. The first Appropriations Act rider stated:

No part of any appropriation under this Act shall be available to the Secretaries of the Interior and Agriculture for use for any sale hereafter made of unprocessed timber from Federal lands west of the 100th meridian in the contiguous 48 States which will be exported from the United States or which will be used as a substitute for timber from private lands which is exported by the purchaser.

In essence, the provision banned the export of any unprocessed timber from all Federal lands west of longitude 100° W. in the continental United States. The Appropriations Act did not apply to Alaska, so the authority for Alaska's timber regulations reverted to the Act of 1897 (16 U.S.C. 475; see footnote 7).

In this and in similar if not identical riders attached to the ensuing Department of the Interior and Related Agencies Appropriations Acts, the Secretaries could not authorize log exports in cases determined to be surplus to domestic needs, as had been allowed by the Act of April 12, 1926 (see footnote 10). The rider also directed the Secretaries to enact regulations to define and prevent substitution, versus merely authorizing them to do as prescribed in the Morse Amendment.

Substitution restrictions were now sought to deter Federal timber purchasers from substituting Federal timber for private timber in the profitable export market. The congressional intent regarding substitution was not to control a purchaser's buying and selling

²⁵ Housing and Urban Development Act of 1970, P.L. 91-609, Title IX, 84 Stat. 1817 (1970).

²⁶ Department of the Interior and Related Agencies Appropriation Act of [October 4] 1974, Sect. 301.

options, so provisions were included to provide for companies owning land in two separate market areas. These provisions allowed a company to purchase Federal timber for the domestic market, without being penalized for purchasing private timber bound for the export market from different market areas. An example would be a company purchasing Federal timber from Oregon destined for domestic processing while purchasing private timber from Washington.

Agency actions resulting from the appropriation acts—

Forest Service

Bureau of Land Management

Following the introduction of the first appropriations rider in October 1973, the Forest Service incorporated regulations to prohibit the export of unprocessed National Forest timber effective March 13, 1974. The regulations also elaborated on what constituted unprocessed timber, defined cants as 8-3/4 inches (22.23 cm) or less in thickness, and determined “market areas” as lands encompassing the area the processing plant used for sources and markets for the National Forest timber under contract. Surplus species qualifications also were established.

This historical level is based on the 3-year period, 1971-73, regardless of whether the purchaser was in existence or not. Historical levels of purchase and export may be zero for firms or firms that did not buy any National Forest timber or export any private timber during the base period. Firms with a historic purchase and export level of zero could not buy National Forest timber in any year in which they exported private timber. The historical level did not include volume of surplus species and did not constrain purchase of National Forest timber if it was exported.

Then in 1974, the Forest Service defined direct substitution as the purchase of timber from National Forest System lands to be used in the place of private timber bound for the export market. Direct substitution was considered to have occurred when the purchaser continued to export logs from private lands while increasing their purchase of National Forest timber,

After a series of reviews and reluctant changes, BLM finally amended the relevant parts of Title 42 of the Code of Federal Regulations (where BLM regulations are found) in July 1976 to comply with the 1973 appropriations rider forbidding the export or substitution of Federal timber.

The first regulation proposal was published in 1974; it defined cant size as 8 inches (versus the 8-3/4 inches maintained by the Forest Service). The disagreement with the Forest Service concerning cant size finally was resolved in December 1975, and 8-3/4 inches (22.23 cm) was the standard cant size published in the June 1976 regulations. BLM also initially defined a “market area” as all lands west of 100° longitude, until it was changed to match the Forest Service definition in July 1976.

The BLM also adopted the Forest Service restriction on third-party substitution for all BLM sales, not just those over US\$2,000 and was more lenient than the Forest Service in the definition of “substitution.” The BLM considered substitution to have occurred when a purchaser increased **both** their purchase of Federal timber **and** their exports of private timber relative to their historical pattern. (To commit substitution from Forest Service sales, one had to increase only one or the other while continuing the other practice.)

or increased exports while continuing to purchase Federal timber within the market area. The increase in Federal timber purchases or exports was based on a purchaser's "historical level," defined as 110 percent of the average annual volume of timber purchased and exported by the buyer during 1971, 1972, and 1973. Potential purchasers, therefore, had to prove, before they would be allowed to bid on Federal timber, that they were not practicing substitution. And the only way to gain or transfer the "historical level" was to acquire a qualified purchaser's entire company.

To further clarify the regulations and incorporate changes, in April 1981, the Forest Service updated Title 36 in the Code of Federal Regulations, again. The Forest Service published revised regulations in the Federal Register regarding the export of timber from National Forest System lands, substitution of such timber, clarification of the definition of tributary area, and a definition of unprocessed western redcedar (*Thuja plicata* Donn ex D. Don).²⁷

Three years later, in 1984, the Forest Service addressed and defined third-party substitution and assessed the feasibility of prohibiting that practice. The Acting Associate Deputy Chief of the Forest Service defined third-party substitution as "the acquisition of National Forest timber from a National Forest timber sale purchaser by a firm which is not eligible to purchase the National Forest timber directly because direct purchase would constitute substitution under 36 CFR 223.160."²⁸

²⁷ Hines 1987: 4-5 (see footnote 5).

²⁸ U.S. Department of Agriculture, Forest Service. 1984. Letter of January 11 from Acting Associate Deputy Chief, Forest Service, to General Accounting Office, asking the feasibility of enforcing third-party substitution. On file with: Pacific Northwest Research Station, 4043 Roosevelt Way NE, Seattle, WA 98105.

It was decided not to prohibit the practice, however, for fear that it would be too difficult to enforce and would inhibit domestic trade. "The Forest Service believes it could not enforce a ban on third-party substitution without additional legal authority and staff."²⁹

The BLM agreed with this finding. It was also believed that if the practice were banned, some companies could acquire National Forest timber at lower prices because of decreased demand and competition, and hence the lower prices would result in less government revenue and disrupt traditional log markets and business practices.³⁰

The following, though superseded by the regulations accompanying the Forest Resources Conservation and Shortage Relief Act of 1990 and 1993, is still contained in the code of regulations: The Department of the Interior and Related Agencies Appropriation Act, 1976 (P.L. 94-165) prohibits the use of funds appropriated thereunder for sale of unprocessed timber from Federal lands west of the 100th meridian in the contiguous 48 States which will be exported from the United States or which will be used as a substitute for timber from private lands which is exported by the purchaser. The law also provides that the export restriction shall not apply to specific quantities of grades and species of timber which the Secretary of the Interior determines to be surplus to domestic lumber and plywood manufacturing needs.³¹

²⁹ U.S. General Accounting Office. 1985. [Title unknown]. Report published January 28. On file with: Pacific Northwest Research Station, 4043 Roosevelt Way NE, Seattle, WA 98105.

³⁰ U.S. Department of the Interior, Bureau of Land Management. 1985. Potential impacts of tightening Forest Service log export restrictions. Washington, DC: Resources, Community, and Economic Development Division. 34 p.

³¹ U.S. Code of Federal Regulations. Title 43, Chap II, Part 5400 through Sec. 3(c) (October 1, 1992) 50.

Export Administration Act of 1979—

Key provision—

- Banned export of western redcedar and waney lumber from State and Federal lands in the continental United States. Exception by license only.

The Export Administration Act of 1979³² and the regulations implementing the act established the export ban for western redcedar and waney lumber from State and Federal lands in the lower 48 States starting late in 1982. Federal and State lands in Alaska and Native American trust lands everywhere are not affected.

Western redcedar was banned from export because the old-growth was specifically suited for the manufacture of shakes and shingles, among other products. But domestic manufacturing mills were being outbid for the old-growth trees by exporters and therefore were left scrambling for supplies.

In accordance with the act, unprocessed western redcedar timber continues to be banned from export from the United States to any destination, including Canada, except with a valid export license. The last of these licenses was issued on September 30, 1979. Once processed into specific manufactured products, western redcedar is exportable.

Forest Resources Conservation and Shortage Relief Act of 1990³³—

Key provisions—

- Greatly restricts substitution policy and prohibits indirect substitution.
- Sourcing areas defined.
- Prohibits almost all log exports from state-owned and federally owned lands in the continental United States.
- Department of Commerce is the overseeing body.
- Revises surplus species determinants.

The export ban on federally owned timber based on the riders to the appropriation acts seemed to provide a sufficient domestic supply, until a recession hit in the mid to late 1980s. Occurring at a time when much of the private timber supplies of harvestable age had been tapped and harvested, this recession severely crippled the forest industry. "About 80% of the raw logs cut on lands owned by Washington State and about half of those harvested on Oregon State lands in 1987 were shipped overseas without being processed."³⁴

³² Export Administration Act of 1979, P.L. 96-72 (1979); 15 CFR 377.7.

³³ Forest Resources Conservation and Shortage Relief Act of 1990, P.L. 101-382, 104 Stat. 714, Title IV of Customs and Trade Act of 1990, 104 Stat. 629; 16 U.S.C. 620.

³⁴ The Seattle Times. 1988. Backers of log-export bill finagling a committee quorum. July 11; Sect. B: 7.

While demand for log exports was increasing exponentially throughout the 1970s and early 80s, environmentalists were arguing that large areas of wildlife habitat were being harvested and exported to foreign markets, and small mills were clamoring that they could not competitively bid for private or State timber against the larger firms and Japanese investors. In response to these concerns, Congress began considering further curbs on log exports. Numerous bills, some similar to those drafted in the early 1970s, were introduced into the House and Senate to limit log exports.

One bill eventually did pass. Approved August 20, 1990, and effective January 1, 1991, the Forest Resources Conservation and Shortage Relief Act of 1990 (FRCSRA 1990; see footnote 33) essentially prohibited log exports from all public lands west of longitude 100° W. in the lower 48 States, except for a conditional 25 percent of Washington State-owned timber. With the exception of the export restriction applying specifically to unprocessed western redcedar enacted in 1982, FRCSRA 1990 was the first Federal attempt to impose a blanket restriction on unprocessed timber from Federal **and** State lands.

Based on “evidence of a shortfall in the supply of unprocessed timber in the western United States” (see footnote 33), the goal of FRCSRA 1990 was to promote conservation of forest resources, ensure that the forest resources in the United States were not exhausted, and guarantee a constant and available supply to meet domestic needs. In essence, FRCSRA permanently renewed the provision in the Department of the Interior and Related Agencies Appropriations Acts (see footnote 26) prohibiting exports on Federal lands, thereby eliminating the risk of legal action for legislating within an appropriation provision. This act also further refined and restricted various methods of substitution and prohibited the purchase of State timber with the intent to export it in unprocessed form:³⁵

No person who acquired unprocessed timber originating from Federal lands west of the 100th meridian in the contiguous 48 States may export such timber from the United States, or sell, trade, exchange, or otherwise convey such timber to any other person for the purpose of exporting such timber from the United States, unless such timber has been determined...to be surplus to the needs of timber manufacturing facilities in the United States.

The act provided for the Secretary of Commerce to declare certain volumes, quantities, and species surplus on Federal lands, as can the Secretaries of Agriculture and the Interior. All species determined to be surplus are to be subject to review at least once every 3 years. The blanket prohibition also included indirect (for example, third party) substitution, in addition to direct substitution, for the first time in the history of the Federal regulations.

Congress also determined that no person could “purchase from any other person unprocessed timber...if such person would be prohibited from purchasing such timber directly from a department or agency of the United States” (see footnote 33), thus making indirect substitution illegal.

³⁵ FRCSRA 1990, Title IV Sect. 489 (see footnote 33).

Under the appropriations riders of the 1970s and 80s, direct substitution had been allowed, depending on the supervisory agency with certain specifications in regard to their historic level. The proportion of allowable substitution available to purchasers in earlier years through purchasing and exporting quotas was precluded with this legislation, though a limited transition period was incorporated. Sourcing (or market) areas are the alternatives in FRCSRA 1990 to the historical quotas.

The sourcing areas, established in predetermined geographic locations, allowed a purchaser with multiple operations in more than one geographic region to purchase public timber for domestic processing, while purchasing private timber for export as long as it had been harvested in a different market or sourcing area.

By defining sourcing areas, the act allowed a purchaser with multiple operations to purchase Federal timber and privately owned timber without committing substitution. For example, firms with timber operations in both Oregon and in Washington can purchase Federal timber in a sourcing area of eastern Oregon for primary manufacture while also purchasing private timber in Washington for export. This is considered feasible because it would be uneconomical to transport timber from Oregon to Washington in order to substitute it for private timber exports.

According to the interim rules established within FRCSRA 1990, to be approved for a sourcing area, a person (company) must not have exported unprocessed timber from private lands within that sourcing area in the previous 24 months; they also could not export that timber from that area once approved.

During the first year after enactment, some purchasers of public timber were able to export their timber under a grandfathering clause of sorts applying to the Shelton Cooperative Sustained Yield Unit, which harvests Federal and private timber.³⁶ The grandfather clause permitted the Simpson Timber Company, the corporate partner in the only Federal cooperative agreement, to substitute a volume equal to 66 percent of their historical export quota during fiscal year 1989. By 1995, the Shelton Cooperative Unit was to have gradually reduced substitution volume from the cooperative forest until no more Federal timber was substituted for export in unprocessed form.

The most drastic measure of FRCSRA 1990, however, was the provision prohibiting State-owned timber from export without first undergoing primary processing. This was the first Federal provision absolutely prohibiting the export of State-owned timber. Washington, because it was selling more than 400 mmbf (1.8 million m³) annually, was the only State allowed to continue to sell some of its timber to exporting purchasers. All other States west of the 100th meridian in the continental United States were ordered by the Secretary of Commerce to prohibit the export of unprocessed timber originating from public lands, effective January 1, 1991.

Washington was ordered to prohibit 75 percent of its annual sales from export unless the timber first met the primary processing requirement. Determining the species, grade, and geographic origin of unprocessed timber, representative of its total timber sales program, was up to the State. Yet, if the sales volumes for the State fell below

³⁶ The act actually applies to cooperative sustained yield units in general; however, the Shelton Unit is the only one created before opposition from other private companies stopped formation of additional cooperative units, because the companies claimed inequities in bidding practices were imposed by such agreements.

400 mmbf (1.8 million m³) by 1996, the Secretary of Commerce was authorized to prohibit exports from State-owned timber lands in Washington. If necessary, the Secretary also would increase the amount of unprocessed timber to be prohibited to achieve the purpose of the act. This order, effective to December 31, 1991, was to be renewable every 2 years until 1996 by the Secretary of Commerce.

The first evaluation occurred 1 year after enactment. The resulting statement, issued after the signing of a general order by the Secretary of Commerce, renewed the 25-percent export allowance for Washington.

Pursuant to the act, on December 29, 1991, the Secretary of Commerce signed a General Order (1991 Order) prohibiting from January 1, 1992, to December 31, 1993, the export from the United States to any destination, including Canada, of 75 percent of the unprocessed timber originating from public lands located in States with annual timber sale volumes greater than 400 mmbf (1.8 million m³).

This order did not quell the opposition to log exporting that had been quite vocal since before the inception of the act. Opponents included conservationists, some of the general public, and portions of the timber processing industry. Some people were lobbying for the restrictions to be extended to include all private lands as well as preserving wildlife habitat, for two reasons: first, the timber industry was struggling to operate in a poor economy, and second, a dwindling timber supply was evident.³⁷

These pressures continued, and less than a year later, on October 23, 1992, the Secretary of Commerce reviewed the conditions under the perception that the domestic timber supplies were becoming scarce. In accordance with section 491(c) of the FRCSRA (see footnote 33), after considering:

...(1) actions or decisions taken, for the purposes of conserving or protecting exhaustible natural resources in the United States, which have affected the use or availability of forest products; (2) the volume of timber from the public lands that is under contract has increased or decreased by an amount greater than 20 percent within the previous twelve months; and (3) the probable effects of unprocessed timber exports on the ability of timber mills to acquire unprocessed timber...³⁸

the Secretary issued a general order completely banning the export of unprocessed timber originating on all public lands, Federal and State, to be effective until the end of December 1993.

Ninth Circuit Appeals Court decision—

Key provision—

- The Ninth Circuit Court of Appeals found unconstitutional the provisions that prohibit the export of logs originating from State lands.

³⁷ Pacific Rim Wood Market Report. 1989. Washington governor on log exports. November (56): 16.

³⁸ Franklin, Barbara H. 1992. General order increasing the prohibition on exports of unprocessed timber from certain private lands, October 23, 1992, signed by Barbara H. Franklin, Secretary of Commerce.

Opponents of the various statutory and administrative provisions prohibiting exports of logs harvested on Western State lands included State agencies themselves. Several States hold large acreages of timberland, in trust for schools, universities, and other state institutions. Revenues were affected sharply by removal of export markets. Even the State Forester of Oregon, who oversaw fairly strict existing State log export policies stated that:³⁹

Implementation of these rules may reduce competition for timber sales at auctions and could reduce the prices bid for State timber sales. Reduced timber sale prices could result in reduced revenue flows to the State Common School Fund, to the counties and local taxing districts with Board of Forestry timber, and to the State Department of Forestry. It is impossible to estimate the magnitude of possible price and revenue reductions...[or] to estimate what benefits may result to local economies by making more timber available for domestic processing.

State agencies took umbrage with the way the act was worded. The FRCSRA 1990 stated that the "Governor of each State to which this title applies, or such other State official as the Governor may designate, **SHALL**...issue regulations to carry out the purposes of this section" [emphasis added].⁴⁰ Therefore, several Washington State counties, and the Washington State Boards of Education and Natural Resources sought a judicial declaration holding that some of the provisions of FRCSRA 1990 were unconstitutional.

The District Court supported the Federal ban on log exports from Washington State lands. But on May 4, 1993, the Ninth Circuit Court of Appeals in San Francisco reversed this lower court's decision.

The unanimous decision by the Ninth Circuit Court found unconstitutional two parts of the FRCSRA 1990 provision limiting exports from State lands. The first section identified banned exports of public timber from States in the west with export volumes less than or equal to 400 mmbf (1.8 million m³; section 620c(b)(1)). The other section prohibited the export of 75 percent of the logs harvested from Washington State-owned timber lands and allowed the Secretary of Commerce to ban exports of unprocessed timber from Washington State public lands (section 620c(b)(2)-(c)). The court ruled that these provisions violated the Tenth Amendment to the U.S. Constitution, which

³⁹ Beyerle, J. Michael. 1990. Statement issued in the matter of the adoption of rules governing the export of unprocessed logs from state lands, October 15: Reporting Statutory Authority, Statement of Need, Principal Documents Relied Upon, and Statements of Fiscal Impact. Michael J. Beyerle, Deputy State Forester. Salem, OR: Oregon State Department of Forestry: 1-2.

⁴⁰ FRCSRA 1990: 17 (see footnote 33).

states “the powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.”⁴¹ Essentially, the court ruled that Congress cannot require a State to enact a Federal regulatory program.

Because the parts cited as unconstitutional were not severable, the court ruled that the entire section banning exports from State lands was unconstitutional. However, the entire paragraph 620c was “severable” from the rest of FRCSRA 1990 (see footnote 41); therefore, if the paragraph was removed, then the ruling would not invalidate Federal export restrictions on Federal lands.

As a result of the Circuit Court’s decision, local policy actions were expected by State and private agencies in response to this ruling, but few expected the Federal legislative remedy to appear so soon after the ruling. The Forest Resources Conservation and Shortage Relief Amendment Act of 1993 (FRCSRAA 1993)⁴² was introduced and signed less than 2 months after the previous act had been declared unconstitutional and was effective, retroactively, June 1, 1993.

Forest Resources Conservation and Shortage Relief Amendment Act of 1993—

Key provision—

- Gave the governors discretionary power to ban log exports. Directed Congress to enact a ban if the governors did not.

The FRCSRAA 1993 (see footnote 42) was introduced on June 8, 1993, barely a month after FRCSRA 1990 was ruled unconstitutional. It passed the Senate by unanimous vote on June 17, was presented to President Clinton the next day, and signed into law July 1, 1993.

In response to the Supreme Court ruling, Congress revised the State provision of the act by giving the governors discretionary power, as opposed to mandatory power, to ban log exports. Also included in the revised legislation was the right to give Congress the power to enact a ban if the governors did not do so.

Other fundamental changes embodied in the act include a provision for a ban on the export of all timber from State lands; neither Washington nor any other state west of longitude 100° W. within the continental United States was allowed to export timber from State lands. A paragraph banning direct and indirect substitution applying specifically to State lands (405(b)(3)) also was amended.

A section IV was included in FRCSRAA 1993, which had not been in the previous act, to account for severability of the individual provisions within the act if they were eventually challenged and deemed unconstitutional.

⁴¹ Moore, Rhea Daniels. 1993. Ninth Circuit’s holding that export restrictions on State public lands pursuant to the Forest Resources Conservation and Shortage Relief Act of 1990, 16 U.S.C. Sect. 620 et. seq. is unconstitutional. Memorandum for F. Dale Robertson, Chief of the Forest Service, from Rhea Daniels Moore, Deputy Assistant General Counsel, Natural Resources Division, May 10, 1993. Washington, DC: U.S. Department of Agriculture, Office of General Counsel.

⁴² Forest Resources Conservation and Shortage Relief Amendments Act of 1993, P.L. 103-45, 107 Stat. 223; 16 U.S.C. 620.

Agency regulations following FRCSRA 1990 and FRCSRAA 1993—

Forest Service

Forest Service rules have changed since the passage of FRCSRA 1990; however, prohibiting the export of logs from all public lands as mandated in the act is not reflected in the current Code of Federal Regulations. The act itself contains an interim rule to be followed until agencies' responses are in place.

The regulations require domestic manufacture of timber harvested from all Federal and State lands. These interim regulations prohibit direct substitution; specifically address and prohibit indirect substitution for the first time; limit sourcing area applications to owners or operators of manufacturing facilities in the sourcing region; and maintain Alaska yellow-cedar and Port-Orford-cedar as surplus species.

The 1990 act cited a conditional log export allowance of 25 percent for Washington State timber (or States producing over 400 mmbf [1.8 million m³] a year), but that allotment was removed from the regulations by the 1993 act in conjunction with the decision by the Department of Commerce in October 1992. The Commerce Department is the overseeing body for FRCSRAA 1993; the overseeing agencies are responsible for drawing up regulations, and the Regional Foresters are responsible for administering the restrictions.

The current agency regulations are included in the Interim Rules to Implement FRCSRA 1990 (effective Aug. 20, 1990),⁴³ and FRCSRAA 1993. The regulations are being followed by both the Forest Service and BLM.

Bureau of Land Management

Not many changes in rules and regulations have occurred recently because so much BLM land has been unavailable for harvest for environmental and other reasons. Nonetheless, BLM currently operates under essentially the same interim rules as the Forest Service. Major changes to the 43 CFR Ch II (10-1-92 edition) since FRCSRAA 1993 concern contract policy, which was changed to implement the act. This section states that except for such specific quantities of grades and species of unprocessed timber determined to be surplus to domestic lumber and plywood manufacturing needs, each timber sale contract shall include provisions prohibiting the export of any unprocessed timber harvested from the area under contract; and the use of any timber of sawing or peeler grades, sold pursuant to the contract, as a substitute for timber from private lands, which is exported or sold for export by the purchasers, an affiliate or the purchaser, or any other parties.

⁴³ Governed by Subpart F, Paragraphs 223.185 - 223.203 of FRCSRA 1990 (see footnote 33) and by similar provisions in the amended act.

Bureau of Indian Affairs

The Bureau of Indian Affairs (BIA) oversees the 56.2 million acres (22.7 million ha) of land that is held in trust by the United States government for Native Americans and Alaska Natives. Because these lands are held in trust for private groups and individuals, the lands are not subject to Federal restrictions banning log exports. Of the 278 Federal Indian reservations, 140 are entirely tribally owned and thereby not subject to Federal restrictions applying to Federal lands.

Exports from Native American lands are quite small in comparison to the total exports from the Pacific Northwest. The reservations held in trust by the Government that are harvesting timber in the Pacific Northwest, Idaho, Montana, and California currently do not export logs. The largest harvesting reservation, a privately owned Native corporation in California, is currently exporting logs, however, and taking advantage of the difference in the market values between the export and domestic markets.

Metlakatla, Alaska—In Alaska, the Metlakatla Tribe on Annette Island, which contracts out timber and labor, is on the only Native American reservation in that State. The Metlakatla community, located near Ketchikan, is tribally owned and thus not subject to either Federal timber export restrictions or oversight by BIA. All other Alaska Native timber lands in Alaska are held by Native corporations or individuals, as a result of the Native Claims Settlement Act;⁴⁴ therefore, there is no need for any BIA regulations regarding timber exports from Native American lands in Alaska.

Because BIA oversees sales for Native American and Alaska Native trust lands, it has no export regulations of its own; however, each individual reservation has the right to autonomously impose restrictions. In that light, as certain tribes have been recognized recently and have acquired Federal land, or treaty disputes have been settled, some tribes and reservations have imposed their own restrictions to complete the transaction without hobbling the local economy. These agreements have been between BIA and the tribes of the Warm Springs Indian Reservation (central Oregon), the Grand Ronde Reservation (western Oregon), and the Quinault Reservation (western Washington): the log export restrictions applied to the first two were imposed by the tribes involved; the third was by congressional measures.

Warm Springs Reservation—The McQuinn Strip borders on the north and west sides of the Warm Springs Indian Reservation in central Oregon. The McQuinn Strip regulations came about as a result of a survey dispute settlement agreed upon in 1972. In the settlement, the title of the former Federal land, which formed parts of two National Forests, was deeded to the Confederated Tribes of the Warm Springs Reservation. Yet, to retain previous marketing patterns and avoid severe economic changes in the area after the settlement, an agreement was drawn up specifying that the strip be designated for domestic primary manufacture until January 1, 1992.⁴⁵ Since the expiration of this agreement, logs have been exported from these lands, taking advantage of the higher price to be gained from the export buyer.

⁴⁴ Alaska Native Claims Settlement Act of December 18, 1971, P.L. 92-203, as amended; 85 Stat. 688; 43 U.S.C. 1601 et seq.

⁴⁵ Hines 1987: 7 (see footnote 5).

Grand Ronde Reservation—The Grand Ronde Tribe was formally recognized by the Federal government in 1986, which allowed for the formation of a reservation on land acquired from BLM. The reservation faced opposition from local timber mills and organizations because it was taking away part of their former timber supply. The opposition was insisting that a primary manufacture clause be incorporated into the tribe's reservation act. While claiming this type of action was illegal, the tribe volunteered a Memorandum of Agreement stating that they would not export logs from the reservation for a set time. Signed by the BIA, the agreement is now in full force and effect for 20 years from the date of the formation of the Grand Ronde Reservation in 1988. The 20-year timeframe will expire about when the adjacent Tillamook Forest is expected to reach harvestable age.

This agreement and the one for the McQuinn Strip originated through settlement of court action; the Quinault Reservation has a different story.

Quinault Reservation—The Quinault Reservation acquired additional land as a result of a boundary dispute dating back to the treaty settlement for the northern boundary. Conditional on a 1988 Federal court action granting 11,905 acres (4762 ha) to the Quinault Reservation from the Olympic National Forest, timber from this land was required to undergo primary processing in the Grays Harbor area (near the reservation) for 20 years. This agreement was accomplished by an act of Congress and not through a judicial settlement, as the others had been.

Because of these primary processing designations, BIA adopted the Forest Service's definition of processed versus unprocessed timber to define primary manufactured items: that is, lumber, chips or pulp, green veneer, piles and piling, or cants 8-3/4 inches (22.2 cm) thick or less are considered processed timber products by BIA for Native American lands.

Alaska

Key provisions—

- Organic Administration Act of 1897 is the predominant restriction. Log exports from Federal lands in Alaska include all round logs being sold outside the State's boundaries.
- Federal Forest Service and BLM regulations for Alaska differ from the continental United States because of (1) a different economic situation and (2) the omission of Alaska from Federal regulations since 1926 (except for 1969-73).
- Morse Amendment prohibited log exports from Alaska between 1969 and 1973.
- The Bureau of Indian Affairs (BIA) oversees Federal lands for tribal reservations. BIA does not limit or prohibit the export of timber from these lands.

The only Federal ban in the past 25 years on log exports that applies to National Forest lands in Alaska was the Morse Amendment, which specifically included the State during its enactment between 1969 to 1973. As a result, the authority for agency regulations regarding log exports from Alaska for all other years has been based on the Organic Administration Act of 1897 (16 U.S.C. 475, 551; see footnote 7), although

other laws and regulations such as the National Forest Management Act of 1976 (See footnote 11) and the Multiple Use Act⁴⁶ have further refined the provisions of the 1897 act. As specified in the Organic Administration Act of 1897, log exports from Federal lands include all round log exports from the State, not just those bound for foreign ports. So logs shipped from Anchorage to Seattle (or other lower 48 and Hawaiian ports) were and are still considered an illegal export.

Forest Service—The Forest Service imposed the first log export regulations regarding Alaska in 1928. The purpose was to provide a foundation for the State's local markets: jobs, communities, and products. "The establishment of new and the expansion of existing local wood-using plants should be fostered energetically as Alaska is badly in need of more industries," was written in 1928,⁴⁷ justifying the Forest Service's policy regarding Alaska. Even today, Forest Service log export policy for Alaska recites needs to ensure the development and continued existence of adequate wood processing facilities; to accommodate the National Forests of Alaska; to meet the standards of the markets served; and to encourage domestic economic growth and development within Alaska.

The first restrictions, based on the Act of April 13, 1926, prohibited spruce and hemlock exports from the State unless the timber had received primary manufacturing. This point is elaborated on by W.B. Greeley in the memorandum of 1928 (see footnote 47):

Western hemlock [*Tsuga heterophylla* (Raf.) Sarg.] and Sitka spruce [*Picea sitchensis* (Bong.) Carr.] are the important commercial trees of the National Forests of Alaska. These species now furnish most of the raw material for the local sawmill industry and they are the ones which will support the pulp and paper industry which is now developing. While there is a large supply of spruce and hemlock, only a small percent of these species consists of high grade material suitable for export. This better material, however, adds value to the large quantity of less desirable material and should be held so that the local paper and lumber industry will have a more attractive field to work in.

⁴⁶ The Act of 1897 (see footnote 7) states that "for the purpose of preserving the living and growing timber and promoting the younger growth on national forests, the Secretary of Agriculture under such rules and regulations as he shall prescribe, may cause to be designated and appraised so much of the dead, matured, or large growth of trees found upon such national forests as may be compatible with the utilization of the forests thereon...." Section 2 of the Multiple Use Act provides that "the Secretary of Agriculture is authorized and directed to develop and administer the removable surface resources of the National Forests for multiple use and sustained yield of the several products and services obtained therefrom." Citation from General Counsel Opinion No. 126, December 31, 1964, p. 15-16, by John C. Bagwell, General Counsel, citing 36 CFR 221.3(c) in the 1946 CFR.

⁴⁷ Greeley, W.B. 1928. Memorandum dated January 6 addressed to and approved by W.M. Jardine, Secretary of Agriculture. Copy on file with: Pacific Northwest Research Station, 4043 Roosevelt Way NE, Seattle, WA 98105.

This was the first written policy that banned all spruce and hemlock exports, which had actually been banned in practice since 1926. This policy contributed to the development of the rather ill-fated pulp and paper industry in Alaska during the 1920s. The Greeley memo voiced forest industry and Forest Service fears that if “unlimited export of the logs [was] permitted from the Territory...the local development of the paper industry [was] likely to be retarded materially.” Pulp and paper companies had to build mills in Alaska to get their supplies, because the Forest Service staunchly supported the existing log export ban. Unfortunately for the pulp and paper investors, although lumber was valued at twice the value of raw logs, and newsprint paper at six times (see footnote 46), transportation from these mills to Puget Sound and British Columbia soon proved uneconomical. With an unstable financial basis for these ventures,⁴⁸ the pulp and paper mills closed by the time of the Great Depression in 1929.

Federal policy nevertheless has reliably encouraged economic development in Alaska. The same memorandum to Agricultural Secretary Jardine (see footnote 46) requesting permission to regulate the export of logs from the Alaska Territory, stated that the reason regulation was needed “was to protect the development of the Territory’s pioneer economy.”

Greeley’s request to prohibit the export of timber, especially spruce and hemlock from public lands in Alaska, was granted. And although “log shipment from Alaska to the State of Washington, British Columbia and the Orient [had] been discussed...in the past seven or eight years” (see footnote 46), the Forest Service in Alaska was hoping to maintain and establish more industries in this economically volatile region. If log exports were allowed, that would lead to fewer job and market opportunities in the local market.

No other legislative activity occurred regarding Alaska log export regulations until the 1940s. In 1946, the Forest Service codified the regulations that incorporated the provisions and specific export allowances to be given for certain product considerations (see footnote 46):

Timber cut from the National Forests in Alaska may not be exported from Alaska in the form of logs, cordwood, bolts, or other similar products necessitating primary manufacture elsewhere without prior consent of the Regional Forester when the timber sale project involved is within his authorization to sell or the Chief of the Forest Service, when a larger timber sale project is involved. In determining whether consent will be given to the export of such products consideration will be given, among other things, to whether such export will (1) permit a more complete utilization of material on areas being logged primarily for product for local manufacture, (2) prevent loss or serious deterioration of logs unsalable locally because of an unforeseen loss of market, (3) permit the salvage of timber damaged by wind, insects or fire, (4) bring into use a minor species of little importance to local industries development, (5) provide material required to meet national emergencies or to meet urgent and unusual needs of the Nation.

⁴⁸ Rakestraw, Lawrence W. 1981. History of the United States Forest Service in Alaska. Anchorage, AK: Alaska Historical Commission: 108-113.

The foremost reason, quoted in the Greeley memorandum, for allowing export considerations was to salvage timber harvested for local mills, which had become unsalable for reasons such as a sawmill fire or sudden market depression (see footnote 47). The fifth provision was added specifically to address the timber exports allowed to the lower 48 States during World War II.

During World War II, Federal regulations allowed for the export of Sitka spruce, which was harvested to take advantage of its sturdiness and light weight—key factors in the airplane industry at the time. The Forest Service oversaw the removal of logs from the Tongass National Forest, in southeast Alaska, which were rafted to Puget Sound for processing. Various export volumes have been reported, from almost 40 mmbf to 100 mmbf (180,000 to 450,000 m³) of Sitka spruce between June 1942 and October 1944.

After the war, another lull occurred in regulation activity regarding Alaska, which lasted until November 1958. Until then, Alaska had been successful in maintaining the primary processing requirements within its territory. But to maintain the local economy, “from a timber management point of view alone, it is desirable that timber harvesting be increased to capacity as soon as possible. The export policy, as currently applied, tends to work against this objective.”⁴⁹

According to current Forest Service regulations regarding timber harvested in Alaska, the emphasis remains on promoting the local economy by continuing the log export prohibition to other States and to foreign buyers. Still in effect, the regulations of October 1974⁵⁰ differ from the previous rules in the method of approval required for export exception. Approval now rests solely with the Alaska Regional Forester, regardless of the size of the timber sale, whereas the large sales previously were subject to approval by the Chief of the Forest Service.

The regulations of October 1974 also require the primary manufacture for timber harvested in Alaska to meet the same specifications defined by the Forest Service for timber from National Forests in the lower 48 States. Again, because the timber is harvested in Alaska, the Federal primary processing requirement applies to exports to both overseas and domestic destinations outside Alaska.

Stipulations were added to the 1974 regulations to allow owners of harvested timber, who cannot locate a buyer in their market area, to apply for an export exemption. According to these regulations:⁵¹

Unprocessed timber from National Forest System lands in Alaska may not be exported from the United States or shipped to other States without prior approval of the Regional Forester. This requirement is necessary to ensure the development and continued existence of adequate wood processing capacity in the State for the sustained utilization of timber from the National Forests which are geographically isolated from other processing facilities.

⁴⁹ Bruce, Mason B. 1958. Office memorandum dated November 4 from Assistant Regional Forester Bruce to the Regional Forester, Alaska Region. On file with: Alaska Region, USDA Forest Service, Box 21628, Juneau, AK 99802.

⁵⁰ Code of Federal Regulations Title 36, Part 223.10.

⁵¹ 36 CFR 223.161.

The regulations also stipulate that “substitution does not apply to Alaska.”⁵² In addition, in limited circumstances, logs from sales appraised at less than US\$2,000, may be exported as well as Alaska-cedar logs and beach logs.

The Forest Service also has made special efforts to assist Alaska in participating in global markets. Because Alaska is far from most of its markets, the State is usually the last to benefit from the effects of a strong global economy and the first to suffer in a recession. To assist the Alaska economy, the Forest Service has provided wood processing firms in Alaska with marketing alternatives. Before 1959, a limitation, allowing no more than 15 percent of sawmill production to be produced at thickness greater than 6 inches (15 cm), had been gradually established.⁵³ The regulations changed in 1959 to allow cants to be sawn no greater than 8 inches (20 cm) thick. Then, asked in 1974 to increase the threshold thickness to that permitted in the lower 48 States, the Forest Service in Alaska increased the maximum allowable thickness to 8-3/4 inches (22.2 cm) for export cants until 1986. Now, the maximum thickness for cants from Alaska *only* is 12 inches (30.5 cm).

As a result of hearings in the 1960s, the Secretaries of Agriculture and the Interior found Alaska yellow-cedar and western redcedar to be surplus and exportable. Yet in the early 1970s, when the recession hit, smaller mills argued that western redcedar should no longer be considered surplus to local use, and the Forest Service conceded to their argument. Ketchikan Pulp Company, though, appealed the restriction on western redcedar exports. The same small mills requesting the action were then polled. As a result of the survey, it was determined that none of these mills was using western redcedar and therefore there was no local demand for that species. Consequently, in 1976, a new conditional ban on the export of western redcedar was imposed, based solely on whether or not a domestic market exists (here defined as two or more manufacturers buying western redcedar.) Since 1976, western redcedar has been freely exportable.⁵⁴ The policy allowing export of Alaska-cedar (yellow-cedar) remains in effect.

Another disadvantage for Alaska is that the available old growth is often defective, with over 50 percent of some harvests unsuitable for sawing and therefore of limited market value. Other market accommodations were therefore made, such as including chips in the Forest Service definition of primary manufacture in Alaska; which had previously been banned from export. Removal of the export ban⁵⁵

...would provide an expanded market opportunity for the sale of chips made from logs not suitable for manufacture into lumber products. The present installed milling capacity is not sufficient to utilize the volume of chips produced from the harvest of National Forest timber.

⁵² U.S. Department of Agriculture, Forest Service, Alaska Region. 1987. USDA Forest Service Manual; Alaska Region Supplement 275.

⁵³ Bruce 1958: 2 (see footnote 49).

⁵⁴ Western redcedar in Alaska is not subject to the export restrictions of the Export Administration Act of 1979.

⁵⁵ Federal Register. 1977. Vol. 42, No. 129. Wednesday, July 6.

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During the global recession and sagging timber prices of the early 1980s, another accommodation was made, because land owners were having a difficult time selling any timber, especially harvests with a high volume of salvage material. To alleviate the problem, the Regional Forester allowed for timber sales with 50 percent of the timber (by volume) in salvage state to be exportable because the mills were losing money and the salvage material created a fire hazard. Permits were granted during calendar years 1984, 1985, and 1986 to sell 12.7 mmbf (57,000 m³), 31.6 mmbf (140,000 m³), and 17.6 mmbf (79,000 m³) respectively. Once the market improved, the permit system was not renewed.⁵⁶

Bureau of Land Management—BLM in Alaska has only a few small sales, and they are only to the local Alaska market to meet domestic needs. All applications to export timber from BLM lands are forwarded to the Secretary of the Interior for a determination. This is different from the Forest Service, where the Regional Forester for Alaska has that authority.

Both access and timber are limited on BLM lands in Alaska; therefore, no regulations have been written as of late 1994 pertaining to the export of logs from BLM lands in Alaska.

As Federal regulations have become progressively more restrictive, some States in the Pacific Northwest have begun issuing similar legislation limiting (in various degrees) the export of logs from State-owned lands. Some of the States have had fairly strict log export rules regarding public timber since statehood, and others did not issue any such regulations until mandated by the Federal Government with FRCRA 1990 (see footnote 33); it essentially banned log exports from all State lands. The history of State restrictions for Washington, Oregon, Alaska, California, Idaho, and Montana will be discussed.

Before the States of the Pacific Northwest are addressed individually, however, the whole subject of the legality of State-owned timber export restrictions should be discussed, because the constitutionality of these regulations has been successfully challenged twice in the past 10 years. One case challenged Alaska for regulating public timber; the other concerned Federal regulation of State-owned timber. In both instances, the restrictions were found unconstitutional.

The first ruling was the result of the case of South-Central Timber Development, Inc., a timber company in Alaska, against Wunnicke, an Alaska State official. South-Central Timber charged foremost that an Alaska State provision, which imposed a “primary manufacture requirement” mandating that all timber purchased from the State undergo at least some form of partial processing within the State, violated the Commerce Clause of the U.S. Constitution. The Ninth Circuit Court’s decision,⁵⁷ rendered in 1984, struck down the Alaska State law. The court found that this law constituted a burden on commerce, and that despite the existence of a similar Federal policy concerning logs on Federal lands, Congress had not expressly sanctioned the State statute.

⁵⁶ U.S. Department of Agriculture, Forest Service, Alaska Region Regional Forester. 1987. Letter dated January 23. On file with: Alaska Regional Office, USDA Forest Service, Box 21628, Juneau, AK 99802.

⁵⁷ South-Central vs. Wunnicke (467 US 82 (1984)).

Although this ruling applied to Alaska, the other States in the Pacific Northwest soon questioned their own similar log export regulations. As a result, some States abandoned or ignored their existing rules, and others decided to wait for specific court or Federal action before implementing any changes.

South-Central Timber Co. vs. Wunnicke eventually led to FRCSRA of 1990 (see footnote 33), which federally sanctioned State statutes to prohibit all or most log exports from public lands. The 1990 act removed State-owned timber in the lower 48 States from the export supply scene (except for 25 percent of Washington's harvest). Prohibiting all log exports from State-owned or -administered lands, this act was the first Federal regulation to issue a blanket export ban on all species (unless exempted) from public lands.

The portion regarding State-owned timber regulations led to the second key ruling bearing on States' authority. This part of FRCSRA 1990 was rendered unconstitutional in 1992, again by the Ninth Circuit Court. However, the law has since been amended (see footnote 42) and now legally provides for State statutes to limit log exports. At this time, States that have programs prohibiting logs exports may continue them once they are accepted by the Department of Commerce.

Washington

| <u>Key regulations</u> | <u>Year</u> |
|--|-------------|
| Log Conservation and Full Employment Act | 1968 |
| Washington Annotated Code | 1990 |

There were no State restrictions prohibiting log exports from Washington until FRCSRA of 1990 (see footnote 33) was enacted and mandated such regulations, although an earlier attempt had been made in the late 1960s.

The Washington State Log Conservation and Full Employment Act, proposed in 1968 as Initiative Measure No. 32, would have required all State-owned logs to be processed within the State, or within 15 miles (24 km) of State borders, and would have defined primary manufacture as "making all longitudinal surfaces of the log flat or converting a substantial portion into veneer or chips." Washington's first and only autonomous attempt at log export restrictions was defeated by the voters on November 5, 1968, by a ratio of 2 to 1.

Later, the Commissioner of Public Lands for the State of Washington defended the State's position on Federal and State log export regulations in testimony in 1972 before the Subcommittee on Housing and Urban Affairs of the U.S. Senate Committee on Banking, Housing and Urban Affairs.⁵⁸ He argued that intensive management practices were impractical until the log market spurred prices and demand up; that the log

⁵⁸ Cole, Bert. 1972. Statement before the Subcommittee on International Finance of the Committee on Banking, Housing and Urban Affairs, United States Senate. Ninety-second Congress, Second Session. June 8. Salem, OR.

export market stabilized some areas of employment; that the log export market promotes the United States' role in global free trade for mutual advantage; that the log export market played a key role in the State's trust income; and that the log export market was needed to stabilize the demand flows based on the historical trends in the domestic timber market.⁵⁹

The first State log export restrictions were issued by the governor in 1990,⁶⁰ to be effective in 1991, as a consequence of the Federal mandate. State regulations prohibited any person from exporting, selling, trading, or exchanging export restricted timber from the United States and also outlawed direct and indirect substitution.

In the State regulations, those persons not allowed to purchase the timber directly from the Washington State Department of Natural Resources were granted leniency through a "grandfather clause," which allowed them to purchase up to one-third of the volume of timber purchased in an export-restricted timber sale if the timber was to be processed at a domestic facility during 1991. This volume was to be reduced to one-fifth in 1992 and to 10 percent in 1993.

Of the export-restricted timber (the federally allotted 75 percent of the State's timber harvest), the State's contracts required domestic processing proportionate to the timbered area, species mix, and grade.

Hardwoods, western redcedar, and species federally declared to be surplus to domestic needs are specifically exempt from Washington's restrictions; any other exemptions are handled case by case.

Since the enactment of the FRCSRAA 1993 (see footnote 42), Washington is the only State to have rules and requirements in place and approved by the Department of Commerce for regulating their own timber. These regulations are the same as those issued in the WAC 240-15 (see footnote 60), except that the portion regarding the 25-percent export allowance has been removed. Before this amendment, Washington had been the primary exporter of logs from State lands.

Oregon

| Key regulations | Year |
|---------------------------|-------------|
| Oregon's First Ban | 1961 |
| Emergency Act | 1963 |
| Ballot Measure | 1982 |
| Executive Order No. 90-22 | 1990 |

⁵⁹ State of Oregon, Legislative Research Branch. 1974. Regulation of Log Exports in Oregon, California, Alaska, Washington, British Columbia, and Alberta. Salem, OR: 304.

⁶⁰ State of Washington. 1990. Washington Annotated Code (WAC) 240-15 (November 21).

In contrast to Washington, Oregon first limited log exports from State-, county- and city-owned lands in 1961 by an emergency act.⁶¹ This act prohibited log exports to foreign ports but did not place restrictions on interstate trade. It required that all public timber harvested from public lands in Oregon be “primarily processed within the United States.” Primary processing was defined as that stage of manufacture “next beyond the log form of said timber.”⁶² Violators would be found guilty of a misdemeanor.

In May 1963, the law was amended to allow the State Department of Forestry to grant a foreign export permit if no feasible economic market for the harvested logs was available in the United States. This provision was in place until it was repealed in 1981.⁶³ The Foreign Processing Advisory Committee (three people involved in the timber industry) was provided for in this amended law.⁶⁴ Until it was disbanded in 1977, the committee acted to advise the State Forester to honor permit applications in cases where⁶⁵

...upon application of the person in control of the use or disposition of such timber if the Department [of forestry] finds that such timber [was] currently in log form and that there is no reasonable market therefore within those areas of the United States to which it could be economically transported for primary processing.

Timber was required to be in log form before the application could be filed, so that prospective bidders could not bid on unharvested timber contracts with the guarantee of hedging profits from export potential. The revised act of 1963 also amended the primary processing provision to exempt Port-Orford-cedar from the restrictions.

Of the nine applications requested before 1966, three were granted, and of the 12 export permits applied for under this act, 4 were approved. The fourth and final permit issued was not awarded until 1980, a year before the 1963 provision allowing log export permits was repealed. All permits were granted for scaled and rafted logs that did not have a local buyer. The strong domestic timber market is evident here, in that only three other permits were applied for between 1966 and 1980 for State-owned timber, even though Federal timber was removed from the export market during this time.

⁶¹ State of Oregon. 1961. Oregon Laws of 1961, Chap. 700, p. 1433-4 [House Bill 1663]. Approved by the Governor May 31, 1961. Salem, OR.

⁶² State of Oregon. 1961. Oregon Forest Laws and Administrative Rules. Salem, OR: 17-18.

⁶³ State of Oregon, 65th Oregon State Legislative Assembly. 1989. Enrolled Senate Joint Resolution 8. Salem, OR: 1.

⁶⁴ Section 6 of the Oregon law of 1963 specified that the State Forester (or his/her deputy or assistant), plus two others appointed by the Governor, would comprise the committee. Of the latter two, one was to be engaged primarily in logging within Oregon and the other within the Oregon lumber industry.

⁶⁵ State of Oregon. 1973. Oregon Forest Laws and Administrative Rules, Forestry and Forest Products. 526.815, Standards for Permits for Foreign Processing.

The State's export restrictions remained in place for almost 20 years before being challenged in 1982 by a court case, which later proved to have characteristics similar to South-Central Timber vs. Wunnicke. Although the Ninth Circuit Court presided over this case, as well as the South-Central Timber case, it did not support the constitutionality argument put forward in 1982 after considering the evidence. Two years later, though, in light of the court's stance on the constitutionality of Alaska's restrictions, Oregon's local district attorneys, who administer the regulations, were encouraged not to enforce the law:⁶⁶

The Attorney General has previously concluded that Oregon's unprocessed log export ban...is probably unconstitutional....The Supreme Court's decision does not change our conclusion that the Oregon statutes are probably unconstitutional and that no enforcement action should be undertaken under these statutes....

Although Oregon's restrictions remained on the books until the end of the decade, they were neither enforced nor stated in timber sale contracts. As a result, by 1987, nearly 40 percent of all State timber had been purchased by log exporting firms.⁶⁷

In June 1989, regardless of the Ninth Circuit Court's decision on the unconstitutionality of restricting State-owned public timber, Oregon voters approved a ballot measure (legislative referendum) by a ratio of nine to one in favor of a log export ban from State-owned lands. The amendment stated that neither the State Land Board, which oversees income from common school fund lands, nor the State Forester could authorize the sale or export of timber from public lands in Oregon unless the timber had been processed in Oregon. This constitutional amendment was conditional on enabling legislation by Congress, which did not happen. A short time later, FRCSRA 1990 (see footnote 33) mandated that the regulations again be modified.

Oregon's governor⁶⁸ directed the State Forester to adopt temporary rules governing substitution no later than November 1, 1990, and permanent rules implementing FRCSRA 1990 no later than December 20, 1990. Regulations⁶⁹ issued in response to the Executive Order stated that a person is eligible to bid on timber from State-owned lands if the person certifies that they will neither directly or indirectly export unprocessed wood products originating from State or private lands in Oregon (private lands are included to clearly prevent substitution) nor convey unprocessed State timber to any other person not eligible to purchase State timber. Others could apply to purchase State timber after June 1991 if they had not exported timber from private lands during the previous 2 years. A provision was included for exceptions.

⁶⁶ Hines 1987: 10 (see footnote 5). Citing Frohnmeyer, D. 1982. Official Communication from the Attorney General, State of Oregon, to H. Mike Miller, State Forester, State of Oregon, December 14, 1982.

⁶⁷ State of Oregon, Oregon Legislative Assembly. 1989. Enrolled Senate Joint Resolution 8. 1989 Regular Session. Salem, OR: 1.

⁶⁸ Governor of Oregon. 1990. Executive Order 90-22, March 12.

⁶⁹ Oregon State Board of Forestry. 1990. Oregon Administrative Rules, Chap. 629, Div. 31.

The restrictions specifically limited indirect substitution for the first time, by stating that no person could sell timber from State-owned lands to someone not eligible to purchase timber directly from the State. By limiting the substitution to public and private lands in Oregon, that State has allowed a person to legally bid for public timber in Oregon while purchasing private export logs in Washington.⁷⁰

Alaska

| <u>Key regulations</u> | <u>Year</u> |
|-------------------------------------|-------------|
| Alaska Native Claims Settlement Act | 1971 |
| South-Central Timber vs. Wunnicke | 1984 |

Admitted to the Union in 1959, Alaska does not have a long history of log export restrictions; but it has a tumultuous one, given the Alaska Native Claims Settlement Act (ANCSA; see footnote 44), and the Ninth Circuit Court of Appeals, which overturned the State statute banning log exports.

Passed by Congress in 1971, ANCSA provided for the transfer of 40 million acres of Federal lands in Alaska to Indians, Eskimos, and Aleuts, to settle aboriginal land claims of the Native peoples. Those lands became private holdings, not under supervision of the Bureau of Indian Affairs. Native timber harvests are not subject to primary processing requirements.

In southeast Alaska, Alaska Natives received a half-million acres of largely unharvested public timber lands as private owners, mostly in 1979-80, and mostly drawn from National Forests. Log exporting, controversial in Alaska as elsewhere, began at once from these lands. Most Native timber is exported as round logs, and most of Alaska's log exports are from Native-owned private lands.⁷¹

Log export policy for State-owned timberlands has consistently supported domestic processing. The issue may be negligible, however. Harvests from State land holdings in Alaska accounted for less than 3 percent of the total 1995 Alaska harvest.

In May 1974, an earlier policy requiring exported logs to be roughly squared was tightened:⁷²

Cants may be manufactured from all species for export and shall be considered to have received primary manufacture when sawed up to a maximum thickness of 12 inches [30.5 cm] and may be of any width. Timbers cut thicker than 12 inches must be squared on four sides along their entire length with allowances for one-third of each dimension (thickness and width) allowed in wane.

Any cants cut larger than 12 inches required squaring along the entire length with a 1/3 wane allowance for each dimension. This statement recited the State policy that "round logs may not be exported as a marketable commodity."

⁷⁰ The Oregonian. 1990. State adopts private log export restrictions. December 22: Sect. D: 5.

⁷¹ Knapp, Gunnar. 1992. Native timber harvests in southeast Alaska. Gen. Tech. Rep. PNW-GTR-284. Portland, OR: U.S. Department of Agriculture, Forest Service, Pacific Northwest Research Station. 48 p.

⁷² Alaska Administrative Code 76.130, cited in State of Oregon 1974 (see footnote 59).

The timber regulations issued in 1974 also contained provisions for the export of chips. Previously, chips had to have originated from mill residues and logging and have no market value before they could be considered for export. These new regulations allowed chips made from surplus roundwood to receive primary manufacture and be freely exported from interior Alaska if that was their place of origin (precluding use of interior Alaska's ocean ports as trans-shipment points for chips from other parts of Alaska). This allowed harvested timber, which otherwise would have had a negligible value when sawn into lumber, to be manufactured into a more marketable commodity. Chips from southeast Alaska (east of longitude 141° W.) required approval by the State Commissioner of Natural Resources before they would be allowed for export.

On July 2, 1982, the domestic processing principle was reinforced⁷³ with a mandate that the "director will, in his discretion, require that primary manufacture of timber removed under this chapter be accomplished within the State to the extent consistent with the law." It further specified that for the

...purposes of this section, the director will consider timber which has been manufactured into a product for use without further processing as having been primarily manufactured only if the director determines that there is a market for the product.

In October 1982, Alaska's primary manufacture definition was redefined as:⁷⁴

...the breakdown process in which logs are reduced in size by a headsaw, gangsaw, or edger to the extent that the residual cants, slabs or planks do not exceed a nominal eight and three-quarter inches in thickness.

Alaska's local-manufacture policy was soon contested as a restraint of trade that only the Federal Government could impose. In 1984, the South-Central Timber vs. Wunnicke case was decided. The decision returned by the Ninth Circuit Court of Appeals ruled that the State could no longer limit log exports, because such a restriction violated the Commerce Clause of the U.S. Constitution. The court's ruling, therefore, invalidated the primary manufacture regulation option of the Alaska Administrative Code, which stated that the Director of the Department of Natural Resources may require that primary manufacture of logs, cordwood, bolts, or other similar products be accomplished within Alaska.⁷⁵

The memorandum issued by the State as a result of the decision declared that the State would not restrict primary manufacture. Alaska currently has no restrictions on log exports from State-owned lands.

California

| <u>Key regulations</u> | <u>Year</u> |
|--|-------------|
| California Public Resources Code, Section 4650.1 | 1973 |
| Proposition 130 | 1990 |
| AB790 | 1993 |

⁷³ Alaska Administrative Code 71.230.

⁷⁴ Alaska Administrative Code 71.910.

⁷⁵ Alaska Administrative Code Sect. 71.230 and 71.910. These sections were created in 1982 to replace Sect. 76.131, which had been the relevant authorization since 1974.

California's first log export restrictions appeared in 1973.⁷⁶ These restrictions, enforced by the California Department of Forestry and Fire Protection, prohibited the sale of State-owned or managed timber to a primary manufacturer outside of the United States, and prohibited the purchase of timber which was intended to be used as a direct or indirect substitute for timber from private lands owned or under control of the purchaser within 200 miles (322 km) of the sale boundary, (in other words, the market area). These regulations specified that (see footnote 76):

...timber from State forests shall not be sold to any primary manufacturer or to any person for resale to primary manufacturer who makes use of such timber at any plant not located within the United States unless it is sawn on four sides to dimensions not greater than 4 inches by 12 inches [10 by 30.5 cm].

A comment released by the California State Forester's Office noted that having "only four commercial State forests totaling about 69,000 acres [27 600 ha] with an annual cut of 35 million board feet [160 000 m³]," truly minimized the impact of the public resources code (see footnote 59). Violators were then prohibited from purchasing State forest timber for 5 years. This rule was in effect until 1984.

After the Ninth Circuit Court of Appeals made its decision declaring Alaska's statute restricting log exports from State lands unconstitutional in 1984, California's attorney general decided that the current law in California would continue to be enforced until it was overturned or removed by the legislature. The attorney general concluded that a State agency does not have the power to declare a statute unenforceable (or unconstitutional), regardless of a circuit court decision.⁷⁷

The Department of Forestry therefore will have to wait for the California court or a Federal court to specifically invalidate that portion of PRC 4650.1 (see footnote 76) before they stop enforcing it. Hence, the ban imposed in 1974 is still on the books today, restricting log exports originating from State lands in California.

Other legislation has been proposed in California to further restrict log exports. An unsuccessful initiative, Proposition 130, was introduced in California after the Federal public lands restrictions went into place in 1990. It was intended to go beyond the limitations suggested by FRCSRA 1990 (see footnote 33) by extending the export restrictions to limit exports from private lands as well as prohibit the State from buying timber or timber products from anyone selling timber for foreign export (the assumption here is that timber implies logs). Also known as the Forest and Wildlife Protection and Bond Act of 1990, this unsuccessful ballot measure would have permitted owners to use the clearcutting method for no more than 12.5 percent of their harvest until 1996, provided that they did not, among other things, sell logs directly or indirectly for foreign export.

⁷⁶ California Public Resources Code, Sect. 4650.1 (1973).

⁷⁷ Cobb, Ted. 1984. Letter dated June 21 from Cobb, Staff Counsel, to Clifford E. Fago, State Forester. Copy on file with: Pacific Northwest Research Station, 4043 Roosevelt Way NE, Seattle, WA 98105

In 1993, California’s legislature revised the State’s export restrictions for timber from State-owned lands.⁷⁸ The 1973 substitution language was dropped, but its intent was retained by prohibiting timber sales from State forests to firms that had sold unprocessed timber from private lands to foreign purchasers within the previous year or within a year after the end of the firm’s timber-sale contract with the State.

Unprocessed timber is defined in current law as it is in FRCSRAA 1993 (see footnote 42). The existing maximum size for exported sawn wood—4 by 12 inches (10 by 30.5 cm)—was retained. However, export of clear cants less than 12 inches thick was permitted, as was shipment abroad of waney cants of lower grades, less than 8-3/4 inches (22.2 cm) thick. Western redcedar was excepted from these cant rules.

Exports of other wood products were expressly permitted. These included poles, piling, chips, veneer, plywood, shakes and shingles, aspen (*Populus* spp.) pulpwood bolts, and logs destined for chip-making.

The 1993 law also established penalties. Violators are prohibited from purchasing State forest timber for 5 years and may have their operating license suspended for up to 1 year.

Idaho

| Key regulations | Year |
|---------------------------------|-------------|
| Idaho Code | 1958 |
| Timber Supply Stabilization Act | 1989 |

Since Idaho’s inception as a State in 1890, logs from public lands have had to receive primary manufacture within the State,⁷⁹ (except for a 3-year reprieve; see below). According to Idaho Code:⁸⁰

State Board of Land Commissioners are hereby required when contracting for the sale of timber on lands owned by the State to prescribe that the timber cut from said lands under said contract shall be manufactured into lumber for timber products within the State of Idaho.

The only existing export exception was for logs from State-owned lands destined for use in wood pulp manufacturing. Unpeeled cedar poles, rough, green lumber, and cants were considered manufactured; however, cants had to meet certain requirements. Cants were eligible for sale and export from the State if the cants were to be sold to a manufacturer owned by a company other than the current owner of the cants.

These rigid regulations established in the Idaho Code did cause some difficulty; one example was the handling of damaged insect-killed timber in southeastern Idaho. Southeastern Idaho is an area of low mill capacity, and the mills located there could not handle the volume of salvage timber; but when mills located outside the State requested timber, they were denied access to it because of the regulations (see footnote 79). The Idaho Code was enforced until the mid-1980s.

⁷⁸ California Statutes 1993, c. 964 (A.B. 790, Sec. 1).

⁷⁹ Jones, Donald D. 1978. Letter dated June 7 from Jones, Administrator, Division of Forest Resources, Department of Lands, to John E. Woodring, Staff Counsel, Washington State Senate, Olympia, WA.

⁸⁰ Idaho Code Sect. 58-403, (1958).

A 3-year break in the limitation occurred in 1986 as a result of the decision rendered in the South-Central Timber case (see footnote 57). Idaho's attorney general deemed the contractual export restriction unconstitutional and directed the Idaho State Board of Land Commissioners and the Idaho State Department of Lands to cease enforcement and remove such language from the timber contracts.⁸¹ This did not last long.

In 1989, before the enactment of the FRCSRA of 1990 (see footnote 33), the State of Idaho reestablished its regulations on interstate commerce with the Timber Supply Stabilization Act of 1989.⁸² First introduced in March 1988 by Governor Cecil Andrus, the act added Chapter 10 to Title 58 of the Idaho Code to promote the wood processing industry in Idaho, to increase private and public revenues, and

...to act as a market participant in the timber market in a way that helps enhance the long-term maximum value of State forests by ensuring that an adequate proportion of the total sales of timber sold by the State of Idaho is sold to qualified purchasers within Idaho.

Under the Timber Supply Stabilization Act, 95 percent of the sales from State forests are offered to qualified bidders. The remaining 5 percent are offered to all bidders.

The code contains some exceptions to deal with market conditions. Timber sales offered to qualified bidders, but not purchased, are then open to all bidders, inside and outside the State, or if a dislocation of the timber supply occurs and it could be deemed surplus to the needs of the qualified bidders, then it again is open to all. Regardless of the purchaser, the Timber Supply Stabilization Act prohibits the export of unprocessed timber originating on State lands to destinations outside the United States.

The Idaho State Board of Land Commissioners is responsible for maintaining a list of eligible bidders and for the rules and regulations necessary for enactment. All purchasers between 1980 and 1989 were automatically placed on the bid list; all others are required to apply. Any bidders removed from the list are ineligible to participate in bidding for timber sales to qualified bidders for 5 years (see footnote 82).

Pulp logs are exempt from the restriction, and cants are considered manufactured unless they have been debarked solely to be exported outside the State to receive further processing.

Montana

| <u>Key regulation</u> | <u>Year</u> |
|-----------------------|-------------|
| HR 724 | 1990 |

Until 1990, there were no restrictions in place in Montana regarding log exports, primarily because of the historically negligible amount of timber harvested and exported from the State. The first regulations were not approved until October 1990, in HR 724.⁸³ HR 724, written in response to FRCSRA 1990 (see footnote 33), elaborates on

⁸¹ Hines, 1987: 10 (see footnote 5).

⁸² Timber Supply Stabilization Act of 1989, Idaho Code Sect. 58-1001 et. seq. (1989).

⁸³ Forest Resources Conservation and Shortage Relief Act of 1990, 1991, MT. HB 724, 1991, MT. ALS 372 (1990, 1991).

the Montana Department of State Lands proposal issued specifically to define and prohibit substitution of State timber for private logs heading for export. It is an act prohibiting the use of unprocessed timber from State lands as a substitute for unprocessed timber exported from the United States.

HR 724 amended Rule 26.6.411⁸⁴ as an agreement not to export logs from State lands. The definitions were adopted from FRCSRA 1990. The rule states that any person purchasing timber from the State of Montana must sign a nonexport agreement to certify that they are not exporting logs from their lands or from State lands. This agreement states that:⁸⁵

...unprocessed timber, as defined in the [Forest Resources Conservation and Shortage Relief] Act, originating from lands owned by the State of Montana shall not be exported from the United States, or be sold, traded, exchanged, or otherwise given to any person unless that person agrees not to export such unprocessed timber from the United States and agrees to require such prohibition in any subsequent resale.

Substitution occurs when a person purchasing timber from the State of Montana has exported unprocessed timber from private lands in the State anytime in the year prior to the purchase date. Surplus species are those deemed so by the Secretary of Commerce.

No regulations have been adopted to incorporate HR 724 to date. There is no enforcement mechanism available either, because of negligible export activity.

Export Restrictions for British Columbia

The first commercial record of log exports from British Columbia, which occurred late in the 1800s, was a shipment destined for Puget Sound.⁸⁶ This, however, was one of a negligible number of log exports from British Columbia since the Province was recognized in 1869—a result of progressively restrictive log export restrictions at the Provincial and Federal levels. Log export limitations and restrictions in British Columbia were first enacted within 20 years of its becoming a Province within the Canadian confederacy. Since before the start of the 20th century, log export restrictions, taxation, fees and penalties have merely played variations on the theme of export bans without a drastically progressive change in the overall score throughout time.

A Comparative History

| Legislative foundation | Year |
|---|---------|
| Canadian Constitution Act | 1867 |
| Land ownership and legislative designations | Various |

⁸⁴ Agreement Not to Export State Logs. Mont. Admin R. 26.6.411 (1990).

⁸⁵ Mont. Admin R. 26.6.411, Sect (2)(a)(ii) (1990).

⁸⁶ Shinn, 1993: 4 (see footnote 6).

The Canadian Federal government enacted the Canadian Constitution Act, also called the British North America Act, in 1867. This act created Canada and assigned the Provinces management of natural resources. As a result, when British Columbia formally became a member of the Canadian Confederacy 4 years later, the Province retained her control of the natural resources located within, while the Federal Government remained responsible for overseeing international trade. Consequently, British Columbia has led the way in regulating log exports almost since its inception into the confederation. The Federal Government has adopted regulations mimicking the Province's to obtain the same objectives, but this did not happen until World War II.

The overall purpose of the Provincial and Federal policies has been to maintain and enhance Provincial development, provide jobs, ensure that all aspects of the timber industry remain solvent during the ups and downs of the economy, and ensure that essentially all timber cut within the Province is subject to the same export controls.

Although these restrictions seem highly protectionary, leniency has existed during times of recession, essentially because harvest levels tend to be greater than the volume in demand. During these times, log exports have been permitted, or at least factored into legislation to maintain employment levels so that forest products would remain a viable industry. But those cases have been rare historically.

Since 1901, British Columbia has directly prohibited exports, even though the Province employed taxes and fees as early as 1888 on logs bound directly to the export market to deter potential exporters.

Whether the Province or the Dominion exercises export control depends on the lands being administered. There are four relevant categories:

| Designation | Definition | Control |
|--|---|----------------|
| Nonroyalty lands | Granted before 1887 | Federal only |
| Pre-1906 land grants or Crown grants | Include the majority of private lands | Federal |
| Post-1906 land grants; also Crown grants | Granted after 1906 | Provincial |
| Non-Provincial lands | Indian reserves, National Defense Lands, and Federal reserves | Federal |

Historically, the log export restrictions of British Columbia have been monitored more closely and have been more prohibitive than those of the United States, and the primary reason rests on the scale of land ownership in the Province vs. the U.S. Pacific Northwest. One primary factor leading to the significant differences in scope of the restrictions is the percentage of lands covered by the restrictions. In 1991, forest resource ownership in British Columbia was 95 percent Provincial, 1 percent Federal, and 4 percent private.

A difference in export policy between the Pacific Northwest and British Columbia is that the Provincial government of British Columbia generally implemented the restrictions first, which the Federal Government eventually adopted for the country (although sometimes up to 35 years later). The process tends to have been the opposite in the United States, with Federal laws setting the standard and States subsequently instigating, or eventually adopting by decree, similar restrictions.

This section will first discuss British Columbia log export restriction and then highlight the later Federal legislation. Much of the history of Canadian Federal and Provincial legislation is based on material provided from Shinn (see footnote 6).

Early Provincial Regulations

| Key provisions | Year |
|---|-------------|
| British Columbia Land Act | 1891 |
| British Columbia Land Act Amendment Act | 1901 |
| British Columbia Land Act Amendment Act | 1903 |
| Timber Manufacture Act | 1906 |
| Timber Manufacture Act | 1909 |
| British Columbia Forest Act | 1912 |

British Columbia has continually refined and redesigned its logs export restrictions since its first years as a member of the Canadian Dominion. The evolution of export policies has been based on ensuring manufacture within the Province and maintaining a healthy Provincial forest industry.

Beginning in 1888, just a year after joining the Canadian Dominion, British Columbia enacted its first regulatory venture: levying a tax on all logs exported from the Province. A more direct method of export control, however, quickly followed.

The British Columbia Land Act Amendment of 1891 restricted the export of logs cut from Crown lands to within-Province use. Then the British Columbia Land Act Amendment Act of 1901 amended the 1891 act by adding the possibility of allowing specific exception to export logs. Yet while recognizing the possibility of exporting logs in the Land Act of 1901, the next Land Act, the Land Act of 1903, extended the export restrictions to include nonroyalty lands. This Land Act imposed a conditional refundable tax on timber from nonroyalty lands to be refunded if the timber was for local use or manufacture. (This tax eventually was declared unconstitutional in 1926.)

Rapid industry growth soon led to more legislation as Canadians hurried to meet the surge in U.S. demand for timber for construction after the San Francisco fires. To regulate the booming industry, the Timber Manufacture Act of 1906, also known as the Forest Act, extended the export ban of the 1891 Land Amendment Act to include lands granted by the Crown after March 12, 1906, so that lands subject to the Provincial export restrictions would include areas granted in the future. The act of 1906, however, did not renew the exemption clause permitting log exports provided for in the Land Act Amendment Act of 1901. No restriction on export applied to logs from Federal land at this point (see footnote 86), although to this day, nonroyalty lands are accountable only for export taxes and fees. According to Shinn (see footnote 6), this act is treated in policy discussions as the initial restrictive policy measure regarding log exports.

The production growth in 1906 dramatically reversed itself over the next 3 years. This, coupled with other deteriorating market conditions, led to a poor forest economy, and demand fell precipitously. Consequently, as a corrective means to maintain some industry activity within the Province, the Timber Manufacture Act of 1909 was enacted to renew the provisions of 1906 and add the export exemption possibility that had existed in the British Columbia Land Act Amendment Act of 1891.

By 1912, the Provincial government realized the need for an organization to oversee the timber resources of the Province; therefore the Forest Act of 1912 established the British Columbia forestry branch, which also consolidated the Land Act Amendment Act of 1903 and the Timber Manufacture Amendment Act of 1909. The 1912 act enabled the Provincial government to restrict timber cut on Crown lands granted after 1906 to use within the Province, unless the timber was specifically exempted by the Lieutenant-Governor in Council. The legislation has remained virtually unchanged since 1909.

Provincial Legislation Through World War I

| <u>Key provisions</u> | <u>Year</u> |
|---|-------------|
| Timber and Royalty Act | 1914 |
| British Columbia Forest Act Amendment Act | 1916 |
| Order in Council | 1918 |

With the onset of World War I, British Columbia passed the Timber and Royalty Act of 1914, allowing the Lieutenant-Governor to issue an exemption from all log export restrictions to gain more revenues for the Provincial government. This release of timber was to have been done in conjunction with a royalty tax imposed on exports in another effort to make money for the Government (see footnote 6). In 1916, the Forest Act Amendment Act renewed this blanket exemption option.

Under the authority of these laws, by 1918 the Lieutenant-Governor had ordered the species exemptions be reimposed except for grade 3 cedar.⁸⁷ These laws also provided for the formation of the Log Export Advisory Committee (LEAC), whose purpose was to advise the Lieutenant-Governor on export exemptions.

These Provincial regulations remained in place until the mid-1970s and were models for future Federal legislation, which was introduced in 1947, some of which superseded the Provincial legislation.

Provincial Legislation: Recent Years

| <u>Key provisions</u> | <u>Year</u> |
|-----------------------------|-------------|
| British Columbia Forest Act | 1974 |
| British Columbia Forest Act | 1978 |
| General Order | 1984 |
| Order in Council No. 1252 | 1987 |
| Order in Council | 1988 |

British Columbia historically has had various levies, fees, and taxes; however, throughout the 1970s and 1980s, extensive increases in the fees in lieu of export were incurred for log exports.

⁸⁷ Yellow-cedar or Alaska-cedar. Whether western redcedar was included is not clear.

The first tax on logs permitted for export was passed in 1888. By the 1950s, the rate was C\$0.50 per cunit (100 cubic feet; 2.8 m³), and by 1973, it was increased to C\$2.00 per cunit. By the following May, the taxes on log exports became C\$2 per cunit for log-grade pulpwood, C\$5 per cunit for cottonwood, C\$40 per cunit for cypress (yellow-cedar), and C\$10 per cunit for all other species.

The 1970s also brought the first major changes in the Provincial legislation since World War I. Section 92 of the British Columbia Forest Act of 1978, read that:⁸⁸

All timber cut on Crown lands, or on lands granted after the twelfth day of March, 1906, or on lands held under pre-emption record, shall be used in the Province or be manufactured in the Province into boards, deal, joists, laths, shingles, or other sawn lumber, or into chemical wood-pulp or paper, except as hereinafter provided; and all logging and manufacturing camps or premises used or occupied for any purpose of or in connection with the cutting or manufacture of such timber shall be located in the Province.

Sections 95-97 of the act also granted the Lieutenant-Governor in Council the right to authorize exports of piles, poles, railway ties, crib-timber, woodchips, mechanical woodpulp and any other “unmanufactured timber...upon such terms and conditions as he sees fit” if within-Province manufacturing problems due to topographical reasons occurred. With the looming recession, however, legislating log export restrictions became more frequent.

The Forest Act of 1979 elaborated on export exception qualifications to the within-Province manufacture rule. The act identified log export exceptions for timber surplus to domestic need with no economically feasible use within the Province, or that would otherwise be wasted from decay or lack of reforestation of an old, unmarketable stand.

Then in 1986, timber stands in the Mid Coast, North Coast, and Queen Charlotte Timber Supply Areas of British Columbia were determined to be uneconomical because of age, disease, remoteness, and associated transportation costs to harvest and process the timber within the Province. Therefore, an Order in Council was issued providing for a blanket exemption from within-Province manufacture for these areas.

Federal legislation regarding log exports did not exist until World War II. Provincial land granted before 1906 and Federal land were regulated only by the Province; logs were, hence, freely exportable until that time. Crown regulations issued during World War II, however, applied to all British Columbia log exports.

Canadian Regulations

Federal Regulations, World War II to Present

| Key provisions | Year |
|---|-------------|
| War Measures Act (2 acts) | 1940 |
| National Emergency Transition Power Act (NETPA) | 1945 |
| Export and Import Permits Act | 1947 |
| Export and Imports Permit Act | 1970 |
| Export and Import Act | 1974 |

⁸⁸ Statutes of British Columbia 1978, c 23, s 135, 136, 137.

The first Federal act passed was the War Measures Act, in July 1940, to prohibit the export of unmanufactured Douglas-fir (*Pseudotsuga menziesii* (Mirb.) Franco). By December 1940, another War Measures Act expanded the species concerned to include all true firs (*Abies* spp.) and prohibited the export of all unmanufactured wood products unless specifically exempted.

By 1945, the restrictions were written into the National Emergency Transition Power Act (NETPA) and then again into the Export and Import Permits Act of 1947. The Export and Import Act remains the statutory basis for Federal log export restrictions today.

Since the enactment of the Canadian Constitution Act in 1867, which granted the Provinces rights over natural resources and the Crown control of international trade, the Province had been in control of exports of forest products. When the Canadian government enacted the Export and Imports Permit Act of 1970,⁸⁹ the Federal Government was granted authority over all exports, including those from private lands. The Federal Government returned export control over Provincial lands to the Provinces, while it retained control over all remaining lands (except for Indian reserve lands and Crown-granted lands before 1906). Timber from these private lands, Indian reserves, Federal lands, and lands granted by the Crown before 1906, which had been free to export logs, were now under Federal restrictions. A Federal export permit is now required for all logs leaving Canada, and the Federal authorities accept Provincial decisions on timber under its jurisdiction.

The Export and Import Act of 1974 changed the focus from one of promoting national security, which had been carried along since the Export Import Act of 1947, to promoting domestic manufacturing via export restrictions.

British Columbia Agencies and Export Procedures

The Ministry of Forests of British Columbia is in charge of defining the regulations associated with the laws of the Province. The Federal Ministry of Foreign Affairs and International Trade regulates exports for the entire country. Initially the Log Export Advisory Committee (LEAC) and, later, the Timber Export Advisory Committee (TEAC) played an advisory role in the issuance of export permits to those who qualify.

The LEAC was formed in 1918 and included a mix of loggers, exporters, manufacturers and members of the British Columbia Forest Service. It reviewed permit applications and advised the Minister of Forests and the Lieutenant-Governor on whether an export permit should be granted. Criteria for these exemptions have been modified over time on species, surplus, renewability, sustainability, and market area.

In 1918, physical surplus of harvested logs was all that was needed to establish the need for a permit. The criteria then evolved so that an applicant needed to prove that the harvested timber was actually surplus to their market area by showing evidence of refusal by three mills to purchase harvested timber. Thirty years later, LEAC changed the requirement to three refusals from mills actually using the type of log the permit

⁸⁹ Export and Imports Permit Act, R.S.C. 1970, C. E-17, as amended.

request was for and that the logs must have been available to domestic buyers for at least 60 days. This physical surplus determinant, availability, was lowered to 30 days in 1969, and then to 2 weeks of advertising in appropriate papers without receiving a purchase offer in 1975.⁹⁰ This remains true today. Federal policy also changed in 1975 to mirror the LEAC change regarding 2-week advertising.

The Federal Government took a seat on LEAC in 1968. Then in 1969, the Canadian Ministry of Industry, Trade, and Commerce changed the permitting process so that the Federal legislation and the Province's would be more similar. The permitting application and approval process is still overseen by the Province, although all exports require a Federal export permit as well. In general practice, if the Provincial Lieutenant-Governor issues a log export permit, then the Federal Department of Industry, Trade, and Commerce also issues one.⁹¹ Timber intended for export from lands granted by the Crown before 1906 (i.e., not subject to Provincial restrictions) are granted Federal permits on the recommendation of LEAC. In 1975, the Canadian Government harmonized their restrictions with the Province's and has since kept up with Provincial changes.

To examine exemptions and blanket applications, as of 1975, LEAC met to advise on permit applications for surplus timber from Provincial lands granted after 1906 and from lands restricted by Federal policy. Then the Provincial Lieutenant-Governor in Council and the Federal Minister of Industry, Trade, and Commerce made the final decision as to whether the timber was actually surplus to Provincial needs or was to receive primary processing.

In 1984, the Minister of Forests refined his interpretation of the British Columbia Forest Act of 1979, which based exemption on surplus, economics, and use. This revision provided for exemptions of standing green timber to be issued for a percentage of hemlock-balsam (hemlock and true firs) stands, if it could be demonstrated that harvesting would be uneconomical unless the logs were predestined to received a premium price on the export market. To be approved for the exemption, the logs had to come from remote and uneconomically harvestable areas and had to be harvested as part of other operations.

The LEAC was disbanded in 1986 and its advisory functions given to TEAC. The initial purpose of TEAC was to recommend permits to export standing green timber based on economic need. Membership in TEAC includes individuals in the log trade community and operates as an advisory committee to this day.

Current Procedures

Timber from lands granted by the Crown prior to March 12, 1906 (except when the timber has been included in a tree farm license), is considered exportable under part 12 of the Forest Act of 1979 and thereby not subject to Provincial export controls. According to the act, the timber is not subject to the restrictions and exemption process. Federal authorities, however, require that a Provincial export permit is obtained.

⁹⁰ Shinn 1993: 8 (see footnote 6).

⁹¹ Austin 1969: 13 (see footnote 3); also Shinn 1993 (see footnote 6).

Exemption regulation⁹² is based on the 1979 Forest Act:

The Lieutenant-Governor may exempt from use or manufacture within the Province, a species of timber or a volume of timber for a period or successive periods of time, whether standing or felled. Exemptions of harvested volumes over 15000 cubic meters [3.3 million bd. ft.] or exemption prior to harvest requires approval by the Lieutenant-Governor in Council through an Order in Council.

The Lieutenant-Governor in Council may exempt harvested or standing timber. The Minister can exempt only harvested timber on applications less than 15 000 cubic meters (3.3 million bd. ft.) in volume. According to the act, the Minister of Forests may exempt volumes of harvested timber for export as long as they do not exceed 15 000 cubic meters (cum; 3.3 million bd. ft.). To establish whether harvested timber is surplus to local needs and may be exported, the location from where the timber originated must be known. This is because timber from the coast is subject to inclusion in the Vancouver Regional Bi-Weekly Export List, and timber from the interior must go through a prescribed form of surplus testing. If after this timber has been advertised and receives no offers, or has been qualified as surplus timber, the application is submitted to TEAC for review and recommendations.

Substitution regulations exist in British Columbia, as well, although they are not as restrictive as those in the United States. According to current TEAC policy, TEAC will not⁹³

...consider offers for logs being advertised...by any company or individual who has exported logs directly or indirectly from the Province for the previous three months...nor will they recommend any applications for export from a company or individual who has submitted a valid offer for logs being advertised on the Bi-Weekly list for a three month period.

All standing timber applications, where the Ministry has concluded that for coastal timber unusual circumstances warrant such an exemption, are reviewed by TEAC.

General (or blanket) standing timber exemptions usually specify volume, species and timber quality eligible for export, and in most cases, they encompass one or more geographic areas of the Province.⁹⁴ Long-term standing timber exemptions also exist. They too are granted by the Lieutenant-Governor through an Order in Council. A 1990 Order in Council, exempting standing timber for Mid Coast, North Coast, and Queen Charlotte Island market loggers, has expired without renewal.

Fees in lieu of manufacture still exist and must be paid by all who export timber from Provincial lands. For coniferous saw logs meeting the surplus criteria, a fee of 100 percent of the export premium (the difference between the export price and the domestic price) must be paid. For pulp logs, the fee is 40 percent. If the export exemption is based on economic criteria or on usage criteria, the fee is then 15 percent. A minimum of C\$1 per cum must be paid.

⁹² British Columbia Ministry of Forests. 1992. Province of British Columbia Procedures for Export of Timber. 20700-02, Export Procedures Document. October 14: 2.

⁹³ British Columbia Ministry of Forests. 1992: 7 (see footnote 92).

⁹⁴ British Columbia Ministry of Forests. 1992: 8 (see footnote 92).

Log Exports From Indian Lands in British Columbia

All Provincial fees must be paid by those who have been approved for an export permit by the Province. The Federal Government approves the export exemption (as it usually does), and charges a C\$15 Federal export permit fee. The Federal fee must also be paid for timber exported from lands that are not subject to the Provincial rules.

Indian bands⁹⁵ in British Columbia have been given the rights to use the resources on federally owned land within British Columbia and the rest of the Dominion. Indian timber regulations were promulgated under the Indian Act. Essentially the timber is owned by the Federal Government and is shared for use and benefit of the Indians. Rights to use the timber are owned by the band as a whole, where each member has equal rights to the timber. The proceeds from any sale, for export or otherwise, therefore go to a trust account for the band, not to a particular individual.

The lands are under the jurisdiction of the Canadian Department of Indian and Northern Affairs and are not restricted by the rules and regulations of the British Columbia Forest Service. Therefore, the band does not have to get approval for a Provincial permit before applying for a Federal permit. If the band wants to export goods, they must do so through the Canadian Department of Foreign Affairs in Ottawa. An additional approval is required from the Department of Indian and Northern Affairs after the band has proven that there is no local use for such timber.

Import Restrictions United States

Key developments—

- Early Animal Plant and Health Inspection Service (APHIS) Import Restrictions
- APHIS Log Import Restrictions Specific to New Zealand and Chile
- Generalized Rules for Log and Lumber Imports
- Moratorium on Imports under APHIS Rules

Since its European occupancy, North America has seen the accidental importation of more than 300 insects and diseases affecting trees and shrubs. Other insects and diseases have affected farm crops and livestock. To prevent further incursions, the Animal and Plant Health Inspection Service (APHIS) was established in the U.S. Department of Agriculture.

Early APHIS regulation prohibiting log imports into the United States stemmed from detailed pest risk assessments, which found that dangerous plant pests could be introduced to domestic stands with the importation of logs containing such threats. Log imports into the United States from countries other than Canada were in limited quantities, though, because of the vast resources available here, and there were diseconomies of scale for anyone who undertook such a venture. The APHIS import regulations therefore called for inspection only at port of arrival, followed by treatment or reexport if certain plant pests were found.

As the available timber supply in the Western United States and Canada has declined, demand has shifted to nontraditional sources. Wood manufacturers are beginning to use the foreign sources to offset expected harvest reductions, and to provide raw materials for their facilities at prices competitive with or better than domestic

⁹⁵ Indian bands correspond to U.S. Native American tribes.

prices. The sources, particularly New Zealand and Chile, have developed a commercial interest and expertise in forest management and are entering the log export market with increasingly large volumes of timber at competitive prices.

As domestic mills turned to new markets for viable substitutes for the declining Northwest timber supply, APHIS recognized the need to protect the domestic forest stands from pests that may be imported with the timber from nontraditional regions. The primary source of timber had become (and remains) New Zealand, so a pest risk assessment for radiata pine (*Pinus radiata*) and Douglas-fir from New Zealand was conducted by the USDA Forest Service. It was found that fumigation and heat treatment would be required to, respectively, kill the insects and destroy the fungi found in the logs before they were imported. As a result, APHIS amended its foreign quarantine regulations to specify an exception for log imports from New Zealand in the form of an interim rule.

Guidelines were set by APHIS for care and handling of the logs until they received processing at a facility in the United States. Before being eligible for import into the United States, the timber had to be sawn from live, healthy trees that were free from decay, which had been debarked to help identify deep boring wood pest infestations and to remove other pests housed in the bark of the trees. The regulations also required that the timber be fumigated with methyl bromide within 45 days of felling.

At the time of import, the importer must have held an import permit or a certificate issued by the New Zealand Plant Protection Service saying that the logs had been treated as required before importation, with documentation stating the type, quantity, and origin of the logs and verifying that the required phytosanitation treatment was done.

An import inspector might then visually inspect the logs and even require additional treatment if the logs did not meet the necessary requirements. After inspection, the logs were required to go directly to the facility where they were to be sawn and be heat treated immediately.

With imports from Chile increasing, and involving the same species as from New Zealand, APHIS extended and modified the New Zealand procedures to embrace both source nations.⁹⁶ The broadened rules also added elements of leniency. For example, certificates could now be signed by an authorized government employee, not specifically a plant inspection person, as had been required earlier. In addition, it allowed wood products to be transported in the same hold or sealed container with any wood articles. APHIS did stipulate that at least 7 days advance notice had to be given before the arrival into the port.

In 1995 APHIS expanded to all source countries their import rules for unmanufactured wood articles.⁹⁷ The broadened rules addressed heat treatment, fumigation, irradiation, and other means of pest control. Softwood logs from sources other than Canada,

⁹⁶ U.S. Department of Agriculture, Animal and Plant Health Inspection Service. 1993. Importation of Monterey pine logs from Chile and Monterey pine and Douglas-fir logs from New Zealand. Federal Register 58, No. 215 (November 9, 1993): 59348-59353.

⁹⁷ U.S. Department of Agriculture, Animal and Plant Health Inspection Service. 1995. Importation of logs, lumber, and other unmanufactured wood articles. Federal Register 60, No. 101 (May 25, 1995): 27665-27682.

Mexico's U.S. border States, Chile, and New Zealand must be debarked and heat treated (versus debarked and fumigated in the cases of Chile and New Zealand). Tropical hardwood logs must be either debarked or fumigated. Temperate hardwoods must be either fumigated or debarked and then heat treated. Log and lumber imports from eastern Russia (and other places north of the Tropic of Cancer and east of longitude 60° E.) must be debarked and heat treated.

In March 1997, after about 500 import permits had been issued, a U.S. District Court in San Francisco placed an injunction on issuance of new permits. The decision applied to temperate hardwood and softwood logs and lumber, including kiln-dried sawn items. New permits for tropical woods were not impeded by the decision, and neither were existing permits for other woods, although revisions in the latter are not allowed. The basis for the decision was environmental concerns. APHIS began a revision of their environmental documentation, to be completed for a court hearing in May 1998.

Canada

Because of recent supply restrictions, the issuance of multiple use regulations, and price fluctuations, Canadian mills and timber buyers have been looking offshore to supply themselves with needed timber. This interest in imported timber supplies led the Food Production and Inspection Branch of the Federal Animal and Plant Health Directorate, Plant Protection Division, to issue a directive barring the import of timber unless it is tropical (grows only in tropical climates not found in North America) or it is being imported from a country for which a pest risk assessment has been done, similar to those done by the United States (APHIS) for Chile and New Zealand. To date, only the former USSR has been evaluated and pest risk requirements established to ban the importation of pest and disease that could decimate North American timber stands. Therefore, as of May 1994, only timber from the continental United States, tropical timber (the accepted, specified species), or timber from the former USSR countries can be imported into Canada. Unmanufactured wood products are defined as logs, lumber, wood packing material, wood chips, bark, wood mulch, and shingles that have undergone only primary processing, consisting of the removal of limbs, debarking, rough sawing, rough shaping, and spraying with fungicide or insecticide.⁹⁸

The directive, based on the Plant Protection Act, S.C. 1990, c.22 and the Plant Quarantine Regulations C.R.C., c.1273, require that all imported lumber must be kiln dried (and certified to have met certain degrees of heat treatment) and wrapped soon after kiln drying in such a way as to prevent reinfestation. No permit to import is required. Items not kiln dried are not allowed into Canada. Exemptions include timber products from tropical trees that are completely free of bark (except logs), other processed and manufactured wood products (also 100 percent free of bark), or by a case-by-case exemption for educational, scientific, or industrial purposes. To obtain an exemption such as the last one, prospective importers must contact the Associate Director of the Import Section, Plant Protection Division.

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⁹⁸ Bradnock, W.T. 1994. Memorandum [of May 16] to the Trade: Import of Logs, Lumber and Other Unmanufactured Wood Products from Areas Other Than the Continental United States and the Former USSR. Copy on file with: Pacific Northwest Research Station, 4043 Roosevelt Way NE, Seattle, WA 98105.

Appendix: Timeline

Log Export and Import Restrictions of the United States Pacific Northwest and British Columbia:

| Date | US Federal Restrictions | State Restrictions | Canadian Crown Restrictions | Provincial Restrictions | Notes |
|------|-------------------------|--------------------|---|---|---|
| | Multiple Use Act | | | | Refined the provisions of the Organic Act of 1897 regarding log exports from Alaska. |
| 1831 | Antitrespass Law | | | | First law issued by the U.S. Congress referring to log exports. Denied purchasers access to timber harvested from public lands if it was intended for the export market in log form. |
| 1867 | | | Canadian Constitution Act (also known as the British North America Act) | | This act created Canada and assigned the Provinces management of natural resources. |
| 1878 | Timber and Stone Act | | | | Superseded the Antitrespass Law-- providing lots in WA, OR, CA, and NV for sale to the public, conditional on the provision in the act forbidding removal of timber from public lands for export. |
| 1891 | | | | British Columbia Land Act Amendment of 1891 | Restricted the export of logs cut from crown lands for use only within the province. |

| | | | | | |
|------|---------------------------------|--|--|---|---|
| 1897 | Organic Administration Act | | | | Regulates log exports from Alaska to this day (despite a 4-year reprieve from the Morse Amendment between 1969 and 1973.) |
| 1898 | Act of May 14, 1898 | | | | Extended the homestead laws to Alaska, authorizing the Secretary of the Interior to sell timber from the public lands in Alaska for use in the Territory, but not to be exported from the Territory. |
| 1901 | | | | British Columbia Land Act Amendment Act of 1901 | Amended the British Columbia Land Act Amendment Act of 1891 by adding the possibility of allowing specific exceptions. |
| 1903 | | | | British Columbia Land Act Amendment Act of 1903 | Extended the export restrictions to include nonroyalty lands |
| 1905 | Annual Appropriation Act Riders | | | | Permitted timber cut or removed from the National Forests to be exported from the State or Territory from which it was harvested if allowed by the Secretary of Agriculture. Pre-empted the Organic Administration Act. Renewed annually from 1905 to 1926. |

| | | | | | |
|------|--|--|--|---|---|
| 1906 | | | | Timber Manufacture Act | Extended the export ban of the 1881 Land Amendment Act to include lands granted by the crown after March 12, 1906. |
| 1909 | | | | Timber Manufacture Act | Renewed the provisions of the Timber Manufacture Act of 1906, while adding the export exemption possibility that had existed in the British Columbia Land Act Amendment Act of 1891. |
| 1912 | | | | British Columbia Forest Act | This act enabled the Provincial government to restrict timber cut on Crown lands granted after 1906 to use within the Province unless the timber was specifically exempted by the Lieutenant-Governor in Council. |
| 1914 | | | | Timber and Royalty Act | Allowed the Lieutenant-Governor to issue an exemption from all log export restrictions in an effort to gain more revenues for the Provincial government. |
| 1916 | | | | British Columbia Forest Act Amendment Act | Renewed the blanket exemption option carried by the Forest Act of 1914. |

| | | | | |
|------|-----------------------|-------------------------|--|--|
| 1926 | Act of April 12, 1926 | | | Relaxed but did not amend the Organic Act of 1897, which still prohibited interstate exportation. The act granted the Secretaries the authority to allow log exports, so long as the supply of timber for <i>local use</i> was not endangered. <i>This definition for local use remains the primary authority regarding timber sales in Alaska.</i> |
| 1926 | Act of May 11, 1926 | | | Gave Secretary of Agriculture authority to permit exportation of forest products from the State in which the timber was harvested. |
| 1940 | | War Measures Act (July) | | Prohibited the export of unmanufactured Douglas-fir. |
| 1940 | | War Measures Act (Dec.) | | Expanded the species concerned to all true firs and prohibited the export of all unmanufactured wood products unless specifically exempted. This act was the first <i>Federal</i> ban prohibiting all log exports. |

| | | | | | |
|------|---------------------------------------|--|---|--|---|
| 1944 | Sustained Yield Forest Management Act | | | | Enacted to provide timber harvests on a sustained yield basis for the purpose of maintaining the timber resource and local industry. The agreements would also provide jobs for members of the community involved in the agreement with either the private sector and the Federal Government, or just a Federal agreement. Stipulations within the agreements indirectly restricted log exports because they required between 80 and 100 percent of the timber to be manufactured within the community. |
| 1945 | | | National Emergency Transition Power Act (NETPA) | | The War Measures Acts were rewritten into this act. |
| 1947 | | | Export and Import Permits Act | | NETPA was rewritten into this act, which remains the statutory basis for Federal log export restrictions today. |

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| 1958 | Small Business Set-Aside Act | | | | <p>The purpose of the act continues to enable small timber companies in local communities to be competitive with the large timber companies in bidding for timber contracts. Although the act did not specifically impose export restrictions, the Forest Service mandated that only 30 percent of the timber purchased by a recognized small business could be sold without domestic manufacture by the purchaser (50 percent in Alaska).</p> |
| 1958 | | | Idaho Code (ID) | | <p>State that all timber harvested from State-owned lands must receive primary processing within the State, unless the timber is bound for wood pulp manufacturing.</p> |
| 1961 | | | Oregon First Ban | | <p>Limited log exports from State-, county- and city-owned lands.</p> |
| 1963 | | | Emergency Act (OR) | | <p>Amended Oregon's ban of 1961 to allow the State Department of Forestry to grant a foreign export permit if no feasible economic market for the harvested logs was available in the United States.</p> |

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| 1968 | Joint Determinations by the Secretaries of the Interior and Agriculture | | | Prohibited the export of all but 350 mmbf [-m ³ /ha] of Federal timber from western Washington and western Oregon. Also determined Port-Orford cedar and Alaska-cedar to be surplus and thereby exempt from these restrictions. |
| 1968 | Morse Amendment | | | Extended export prohibition to all States west of the 100th meridian, including Alaska. Redistributed the 350 mmbf [-m ³ /ha] allowable export between WA, OR, and CA; permitted the Secretaries of Agriculture and the Interior to declare certain amounts of specific species surplus to domestic needs; authorized the Secretaries to issue rules and regulations regarding substitution and to exclude sales less than US\$2000 at their discretion. |

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| 1968 | | Log Conservation and Full Employment Act (WA) | | | <p>If passed, would have required all State-owned logs to be processed within the State, or within 15 miles of State borders, and redefined primary manufacture. This was Washington State's first and only autonomous attempt at log export restrictions. The initiative was not passed.</p> |
| 1970 | Housing and Urban Development Act of 1970 | | | | <p>Renewed through 1973 the provisions of the Morse Amendment, which were scheduled to expire in 1971.</p> |
| 1970 | | | Export and Imports Permit Act of 1970 | | <p>The Canadian Government was granted authority over all exports, including those from private lands. The Government returned export control over Provincial lands to the Provinces.</p> |
| 1972 | Warm Springs Reservation (McQuinn Strip) | | | | <p>The voluntary agreement to ban log exports from disputed land granted to the Warm Springs Reservation in 1972. The ban lasted 20 years, and since its expiration some timber logged from that area has been exported.</p> |

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| 1973 | Department of the Interior and Related Agencies' Appropriations Acts | | | Prohibited all log exports from Federal lands and directed the Secretaries to enact regulations to define and prevent substitution. This act did not include Alaska, so restrictions reverted to those applying to Alaska before the Morse Amendment. |
| 1973 | | California Public Resources Code, Section 4650.1 (CA) | | Prohibited the sale of State-owned or managed timber to a primary manufacturer outside of the United States, and prohibited the purchase of timber intended to be used as a direct or indirect substitute for timber from private lands. |
| 1974 | | | British Columbia Forest Act | Stated that all logging and manufacturing operations shall be located in the Province. |
| 1976 | National Forest Management Act | | | Refined the provisions of the Organic Act of 1897 regarding log exports from Alaska. |
| 1979 | Export Administration Act | | | Banned the export of western redcedar and waney lumber from State and Federal lands in the continental United States. |

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| 1979 | Native American Claims Settlement Act | | | | Granted Native Americans in Alaska land as either private ownership or in the form of a corporation. Export restrictions do not apply to these lands. |
| 1979 | | | | British Columbia Forest Act | Identified log export exceptions for timber surplus to domestic need with no economically feasible use within the Province, or that would otherwise be wasted from either decay or lack of reforestation of an old, unmarketable stand. |
| 1982 | | Ballot measure (OR) | | | Voters approved an amendment banning the sale or export of timber from public lands in Oregon unless the timber had been processed in Oregon. |

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| 1984 | South-Central Timber Development, Inc. v. Wunnicke | | | | <p>South-Central Timber charged that an Alaska State provision, which imposed a "primary manufacture requirement" mandating all timber purchased from the State undergo at least some form of partial processing within the state, violated the Commerce Clause of the U.S. Constitution. The Ninth Circuit Court's decision, rendered in 1984, struck down the Alaska State law.</p> |
| 1984 | | | | | <p>General Order</p> <p>Issued because certain areas were found to house stands uneconomical, because of age, disease, and transportation costs, to harvest and process within the Province. This order allowed for a blanket exemption for these areas.</p> |
| 1986 | Grande Ronde Reservation | | | | <p>The Grand Ronde Reservation was formed in 1988, and agreed to a 20-year export ban on the timber from the National Forest, which was granted for the reservation to support local mills until the nearby forests came of harvestable age.</p> |

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| 1987 | | | | Order in Council | Increased the fee on exports to 30 percent of the differential between domestic and export prices, or a minimum of C\$1 per cubic meter. |
| 1988 | Quinault Reservation | | | | In 1988, over 11,000 acres [445 ha] were granted to the Quinault Reservation as the result of a boundary dispute. This land was subject to a 20-year log export ban due to legislative actions. |
| 1989 | | Timber Supply Stabilization Act (ID) | | | Idaho's attorney general deemed unconstitutional the contractual export restriction in place since statehood and directed State agencies to cease enforcement and remove such language from the timber contracts. |
| 1990 | Natural Resource Conservation and Shortage Relief Amendment Act (NRCsRA) | | | | Prohibits almost all log exports from State and federally owned lands in the continental United States. Greatly restricts substitution policy and prohibits indirect substitution, defines sourcing areas, and revised surplus species determinants. |

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| 1990 | | Washington Annotated Code | | | Prohibits any person from exporting, selling, trading, or exchanging export-restricted timber from the United States and also outlaws direct and indirect substitution. |
| 1990 | | Executive Order 90-22 (OR) | | | States that a person can bid on timber from State-owned lands if the person certified that they would not directly or indirectly export unprocessed wood products made from timber harvested on State or private lands in Oregon. |
| 1990 | Prohibition 130 | Prohibition 130 (CA) | | | This unsuccessful ballot measure would have permitted owners to use the clearcutting method for no more than 12.5 percent of their harvest until 1996, provided that they did not sell logs directly or indirectly for foreign export, among other things. |
| 1990 | | HR 724 (MT) | | | As a result of FRCSSRA 1990, Montana defined and prohibited substitution of State timber for private logs heading for export. |

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| 1993 | Ninth Circuit Court of Appeals Decision | | | | The Ninth Circuit Appeals Court found unconstitutional the provisions stemming from FRCSRA 1990 prohibit logs originating from State lands from export. |
| 1993 | Forest Resources and Conservation and Shortage Relief Amendment Act | | | | |
| 1993 | | AB790 (CA) | | | This act would discourage, but not prohibit, log exports from private lands by limiting the sale of timber from State-owned forests to those who do not export logs, thereby gradually decreasing log exports and allowing the State to control State timber exports. |

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Lane, Christine L. 1998. Log export and import restrictions of the U.S. Pacific Northwest and British Columbia: past and present. Gen. Tech. Rep. PNW-GTR-436. Portland, OR: U.S. Department of Agriculture, Forest Service, Pacific Northwest Research Station. 61 p.

Export constraints affecting North American west coast logs have existed intermittently since 1831. Recent developments have tended toward tighter restrictions. National, Provincial, and State rules are described.

Keywords: Log exports, log imports, log embargoes, log trade restrictions.

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